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MIGRANT SMUGGLING IN CANADA POSSIBLE – LESSONS FOR OTHER COUNTRIES

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Abstract: Even though migration has been seen as an expression of people's willingness to overcome adversity to find and live a better life within the complex socio-political and diverse world of today, it has become a problematic phenomenon in Canada, and elsewhere. Aside from definitional challenges, the illegal movement of people presents a wide range concerns for States (e.g., accommodating the numbers, migrant integration, socio-cultural barriers, etc.). Defining and responding to 'irregular migration' is fraught with a number of challenges but recent cases in Canada provide possible options to ensure the safety and security of illegal migration movements not only in Canada but potentially internationally. An intervention and prevention model based on engagement, empathy, and empowerment (i.e. 3E's) is discussed.

Keywords: smuggling, irregular migrants, asylum, Canada, human rights, 3E's.

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Introduction

In response to the lack of employment opportunities and social-political inequalities in various regions of the world, along with some of the by-products of globalization, the movement of people from one place to another, including from country to country, is becoming an increasingly popular and problematic phenomenon in Canada (Boutellet-Piquet, 2011), and in Serbia (Taylor, Cardi, 2017). According to the Global Affairs Canada (2017a) “each year, hundreds of thousands of migrants are moved illegally by highly organized international smuggling and trafficking groups”. In fact, according to a recent United Nations report, the global number of international migrants reached 258 million in 2015, compared to 173,000 million illegal migrants in 2000 (United Nations Department of Economic and Social Affairs, 2017). Meanwhile, the numbers of known migrants in government sanctioned camps in Serbia was estimated to be around 4,500 in 2018, but the number of undocumented migrants is unknown (Vasovic, 2018). Not unlike the situation experienced in recent years in Serbia, some of those smuggled migrants aspire to come to Canada to escape their hardship, dangerous living condition, or to simply seek out a better quality of life. Even though there are no official statistics on the number of unauthorized entries in Canada, it is estimated that between 20,000 and 200,000 undocumented workers are living in the country and a number of them are likely to have been smuggled (Magalhaes, Carrasco, Gastaldo, 2010).

As is the case in most countries, including Serbia, the practice of unauthorized entry in Canada is a dangerous and sometimes deadly criminal activity (Perrin, 2013). It has become an increasing concern not only in Canadian migration policies but also in international cooperation between countries (Castles, Miller, 2009). Consequently, it has garnered the attention of economists, academics, activists, researchers, the media, policy-makers, the United Nations, and the international community. For example, Taylor and Cardi (2017) point out that in 2015 Serbia was a focal point for migrants “when hundreds of thousands of migrants travelled through the Balkans to reach Western Europe”. Even though the route was eventually closed off, it is estimated that some 110,000 illegal migrants pass through Serbia each year. Their article also points out that there are some 7,800 migrants in Serbia with the majority being housed in government run centres.

According to a recent report prepared by US News (2017) in 2017, Canada was ranked the second (behind Switzerland) best country in the world. Therefore, Canada is a prime market for both legal and irregular immigration. However, unlike countries like Brazil which has a very lax policy on legal and illegal Immigration or Austria which has one of the toughest immigration policies,

despite changes to the Refugee Protection Act in 2006, entry to Canada is considered less difficult than immigrating into the United States. Furthermore, since the new 'Express Entry Model' was introduced in 2015, the process has been further streamlined. However, candidates are selected on the basis of how well they are expected to perform economically in Canada – a points-based system that evaluates the applicants in the areas of education, languages, experiences, age, and employment arrangements (Library of Congress, 2015). The model was introduced to try and help support the demand for the country's current and future labour market requirements. Nonetheless, as is the case with most irregular migrants those attempting to enter Canada typically do not meet the minimum requirements and therefore try to enter illegally. Therefore, as Kahn (2017) has observed, Canada has become the "crown jewel" of migration destinations, especially for asylum seekers, refugees, and illegal migrants and as with most 'destination' countries, it faces a number of challenges. Meanwhile, Serbia is seen to a transit country where migrants are mostly trying to get to Western Europe.

Canada ratified the United Nations Convention against Transnational Organized Crime (UNTOC) and sanctioned the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children and the Protocol against the Smuggling of Migrants by Land, Sea, and Air on September 29, 2003. Since then, Canada has incorporated specific anti migrant smuggling legislation into its domestic legal framework. For instance, the Immigration and Refugee Protection Act (IRPA) came into force in June 2002, which represented the first significant revision of Canadian Immigration Legislation since the 1976 Immigration Act (Bou-Zeid, 2007).

This article will begin with a brief discussion about how Canada views and defines migrant smuggling as it is somewhat unique from how other jurisdictions define the activity, and where possible references will be made to the migrant and policy situation in Serbia. We will then provide a short summary of some recent cases that illustrate the means and methods by which people are smuggled into the country. Next, we will present an overview of Canada's formal and informal response mechanisms to addressing migrant smuggling and will then unpack some of the key areas that need to be taken into consideration on humanitarian grounds while changing immigration laws and policies. Again, where possible, several comments about the migrant situation in Serbia will be touched upon. The article will finally conclude with a summary of the measures that have been taken to address the challenges and how these measures might apply to Serbia.

1. Defining and Using “Migrant Smuggling” and “Irregular Migration” within the Canadian Context

Notably, Canada has unique Immigration and Refugees laws and policies which use multiple terminologies in different contexts, such as migrant smuggling, irregular migrants, asylum seekers and refugees, thereby often creating confusions to the public. By recognizing the need of differentiating amongst the terms, the following section will examine how those terms are defined and used in the Canadian context.

Migrant smuggling involves a person who facilitates the unauthorized entry of migrant into Canada and also gets involved in producing and sale of false identification or immigration documentation (The Library of Parliament, 2011: 32). Similarly, migrant smuggler is defined as anyone who might “knowingly organize, induce, aid or abet” someone coming to Canada who does not have a visa, passport, or other required documentation (The Canadian Press, 2013).

Migrant smuggling is not a recent phenomenon in Canada (Kelley, Trebicko, 2010; Schneider, 2017), let alone in Serbia. However, understanding immigration and refugee policy and the asylum seeker system remain a complex issue that may lead to the creation of misinformation or misleading facts and conflate any clear understanding of smuggling activities (Perrin, 2013). In 1995, the Supreme Court of Canada declared that all people in Canada are protected under the Charter of Rights and Freedom, giving irregular migrants who enter Canadian territory the legal rights to claim asylums if they do not seem to be a threat to public safety (Johnson, 2012). To further elaborate, when smuggled migrants cross the US land border ports of entry or enter the territory of Canada through the Canada Border Services Agency (CBSA) inland office or through the Immigration, Refugees, and Citizenship Canada (IRCC) inland office, they are immediately arrested and detained by the Canadian Immigration officials for the violation of the Canadian Immigration Laws. The next step is for the migrants to apply for asylum claims in accordance to asylum system in Canada and thus they are often known as asylum seekers - terminology mainly used by the public and the media. Most importantly, as soon as they apply for asylum claims in Canada, their status from “smuggled migrants” and “asylum seekers” inevitably shifts to “irregular migrants” and thereby the smuggled migrants are officially addressed by the term “irregular migrants”. These migrants are then eligible to access different public services until they are granted a Permanent Resident Visa (PRV) in accordance to IRPA (Government of Canada, 2017). The smuggled migrants are given assistance to prove their identity and layout the basis of their asylum claims, and if they do not meet the criteria for PRV they are deported to

their home country (Public Safety Canada, 2011). Therefore, the numbers of smuggled migrants who apply for asylum claims are not specifically available to public. Similarly, the Asylum Office in Belgrade does not publish statistics on asylum applications or decisions. Yet, basic figures are available through the UNHRC (Belgrade Centre for Human Rights, 2018). Taken collectively, to reduce confusions and misleading discussions, the terms “irregular migrants” and “smuggled migrants” are interchangeably used throughout this chapter. Notably, for this paper, the irregular migrants do not refer to the migrants who come to Canada with legal documents but later choose to continue living in Canada without a valid visa and then claim asylum. Similarly, the “refugees” who have already been granted protection and entered Canada with legal documents are also not defined by the term “irregular migrants”. From humanitarian and human rights lenses, Figure 1 below exhibits the process for irregular migrants to claim asylums on arrival for a temporary permission to stay in Canada until they get a PRV (the process will be discussed more in the following section).

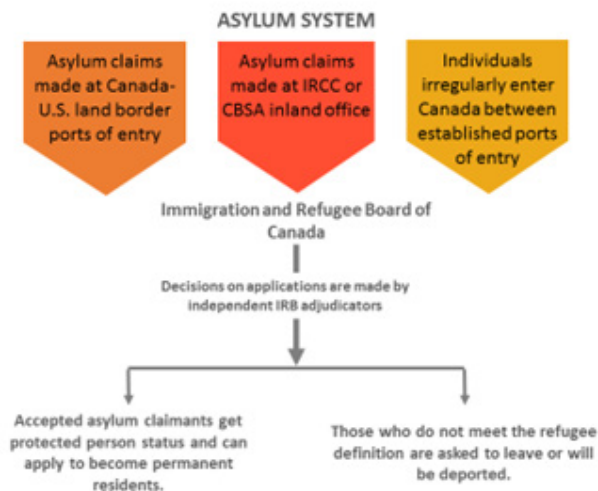


Figure 1: *Process for irregular migrants to claim asylums*

Source: *Government of Canada, 2017*

2. Migrant Smuggling Data and its Challenges

Canada currently employs 23 bi-national border enforcement teams, operating between ports of entry in 15 regions, with members including the Royal Canadian Mountain Police (RCMP), the Canada Border Services Agency

(CBSA), the U.S. Customs and Border Protection, the U.S. Coast Guard, and other American agencies (Moncton, 2013). Thus, it must be said from the onset that data concerning Canada's smuggling data are scant and scattered across multiple sources. As noted earlier, official statistics on only smuggling pertaining arrests and/or prosecutions are not available to the public. Although the data on smuggled migrants are captured under the category of "irregular migrants", it is, undoubtedly, not fair to provide the data of entire irregular migrants in this chapter as this chapter solely focuses on smuggled migrants and does not speak to the other irregular migrants who are living without legal documents in Canada. Yet, a recent case of migrant smuggling can be used as proxy to give a sense of the dynamics of human smuggling through different routes which will be examined in the following section.

Briefly, UNICEF (n.d.) published a fact sheet the migration profile of Serbia and it is noted that the country has ratified (e.g., Refugee Protocol, ILO Migration for Employment Convention, Migrant Smuggling Protocol, etc.) all the key ILO and UN Conventions as they may directly or indirectly relate to international migrations. For the year 2013, female migrants significantly outnumber their male counterparts in all age categories. This indirectly speaks to the risk that women and young girls face in being exploited for possible trafficking purposes and/or forced labour (see generally the Trafficking in Persons report, U.S. Department of State, 2018), as well as asylum related matters.

2.1. Recent Cases of Migrant Smuggling in Canada

Mountz and Hiemstra (2014: 387) point out that: "the Canadian government intercepted only two boats in the last ten years and only six boats in the last twenty years, all off the coast of British Columbia". To elaborate, in July 1987, 173 mainly Sikh smuggled migrants from India were detained on the freighter *Amelia* and taken to Halifax after attempting to enter Canada illegally. Perhaps the most 'infamous' case of migrant smuggling in Canada involved the case of the Italian born immigrant Charles Ponzi. Although better known for pioneering the 'Ponzi scheme' years before, he helped to illegally smuggle fellow Italians into the United States while living in Montreal in the early 1990s. High-profile incident of smuggling from China involved approximately 600 Chinese migrants who arrived by boat on the West Coast of Canada in 1999 and the second high-profile incident involved 47 Chinese nationals were smuggled by four cruise ships on the East coast in 2005, which marked the first use of cruise ships as a method of illegally transporting migrants to Canada. Similarly, in February 2006, Asian and East European organized crime groups were disrupted in Central Canada while smuggling roughly 100 illegal migrants; these migrants were intercepted over the last two years in the Wind-

tor-Detroit area, the majority of whom were Chinese nationals. A recent controversial case involved the human smuggling of 76 Sri Lankans on the cargo freighter the *Ocean Lady*, which was detained on Vancouver Island in 2009 and in August of 2010, Canada experienced another high-profile incident in British Columbia when 492 Sri Lankan passengers were aboard the MV Sun Sea (Aldred, 2015).

Although in March 27, 2012, the fatal crossing of a yacht off the coast of Nova Scotia was a failed attempt to smuggle migrants into Canada, human smuggling is becoming a business and Canada a favoured destination for migrants and refugees of all kind of migrants because of the current immigration and refugee policy in Canada. This has become particularly evident with the recent unplanned arrival of both legal and illegal migrants fleeing the United States in the aftermath of the 2016 Presidential election (Anglin, House, 2017). For example, the recent case of human smuggling of nine Nigerian citizens in Saskatchewan in April 2017 illustrates the influx of smuggled migrants is rising from the US border (Global News, 2017a).

Without a doubt, the Safe Third Country Agreement (STCA) between Canada and the US has empowered smuggled migrants to come to Canada. Efrat (2013: 70) claims: "The United States implemented the STCA to enhance border security and counter-terrorism measures in response to the 11 September 2001 attacks. In contrast, Canada was motivated less by a concern for enhancing border security, and more by a desire to reduce the number of refugee claimants eligible to enter Canada." The STCA applies only at land ports of entry and does not apply to inland claims. Thus, one could readily argue that not only does it create incentives for human smuggling, but it also increases the volume of unauthorized border crossings into Canada. For example, in early 2017, more than 20 unauthorized migrants walked from the US into Canada overnight near Emerson, Manitoba (Canada Broadcasting Corporation, 2017b). Bashir Khan, a Winnipeg-based immigration lawyer who is representing 17 of the unauthorized migrants, argues that the STCA is inhumane in that it is unjust, unfair, and leaves people's lives at risk (The National - Canada Broadcasting Corporation Television, 2017a). Arguably, the volume of unauthorized migrants is rising in 2017 because the administration under United States President Donald Trump has tightened American border security and has increased the number of deportations of undocumented immigrants (Gelbman, Timothy, 2017). Information on human smuggling is obtained mainly from Mainstream media and therefore it is hard to put the numbers on the trade in human smuggling in Canada, or Serbia for that matter. RCMP reported that between 1997 and 2002, smugglers assisted about 12 percent of the 14,792 improperly documented migrant who were intercepted in Canadian borders (CBC New, 2015).

2.2. Human Smuggling Actors and Routes

As noted in the previous section, smuggling specific data sources in Canada are scant and thus it is hard to identify the smuggling actors participating in human smuggling activities. For instance, those who actively play to help smuggled migrants from different countries to reach Canada are still anonymous to public. However, the RCMP (2006) reported that migrant smugglers who help/bring foreign nationals illegally into the country are “organized crime groups composed of recruiters, transporters and escorts, document suppliers, enforcers, support, and debt collection, some of whom are corrupt government officials”. Besides human smuggler, the CBC News (2015) reported that those who are affected by Canada’s legislative changes and out of fear of prosecution or desperation for a better life and thus they pay smuggler to reach Canadian shores. Others are people who may not be able to reach Canada legally and instead decide to take their chances with smugglers.



Figure 2: The top six Provinces for the influx of irregular migrants

Note: This Figure was created based on the recent cases of migrant smuggling in Canada.

Criminal Intelligence Service Canada (2008: 30) reported: “Most human smuggling activity takes place at border crossings in B.C. and Quebec, and to a lesser extent, Ontario. Despite activity in both north- and south-bound directions, there is a significant increase in illegal north-bound migration from the United States into Canada”. Upon reviewing the recent cases of migrant smuggling, the number of migrants who entered Canada illegally from 1987 to 2017 appeared to have followed several popular routes or points of entry including Quebec (QC), British Columbia (BC), Ontario (ON), Manitoba (MB), Nova Scotia (NS) and Saskatchewan (SK) as shown in Figure 2. Similarly, the nations of origin that most smuggled migrants came from are India, China, Pakistan, Sri Lanka, Eastern Europe, Ghana, and Nigeria that are undergoing varying difficulties in relation to social, cultural, economic, political, and/or civil strife.

2.3. Human Smuggling and Enforcement Laws

The human smuggling legislation 2010 charges up to 10 years in jail especially for those who are convicted of smuggling more than 50 people, are part of criminal organization, and endanger the safety of the people being smuggled (Brennan, Keung, 2010; Global News, 2017b). The maximum punishment for a first offence is \$500 fine and 10 years in jail. Those who are convicted of smuggling more than 10 people into Canada are charged up to life in prison. For example, the Canadian female who was arrested when she was bringing nine people to Canadian border in 2017 was charged with one count of human smuggling under the IRPA and count of conspiracy to human smuggling (Global News, 2017b). By contrast, according to the 2017 Trafficking in Persons report (U.S. Department of State, 2017), Serbia does not fully meet the minimum standards for the elimination of smuggling or trafficking, but article 388 of their Criminal Code includes provisions for penalties ranging from three to 15 years imprisonment. However, according to the report, for 2015, of those sentenced the penalties ranged between two years and eight months to seven years and four months imprisonment. Therefore, as it has been well documented, most countries suffer from low prosecution and conviction rates.

3. Overview of Research on Migrant Smuggling

Canadian migrant research in the 1980s was more focused on irregular migration and solving the problem (Crepeau, Nakache, 2006), while more recent studies - mainly academic research - have shifted to the issues of immigration

and refugee policy, as well as to the services available for irregular migrants (see Perrin, 2013). A review of the more recent literature shows that most of the information, including data on the interception of smuggled migrants at entry points, and common unauthorized entries and approval and disapproval of their asylum claims are made available by criminal intelligence reports, immigration records and high-profile publicly reported cases (ibid.). Yet, as Magalhaes, Carrasco, and Gastaldo (2010) point out, there is no standardized method that has been used in compiling data on unauthorized entry for public discourse, as there are various immigration and law enforcement officials who deal with smuggled migrants at the port of entry or inland. This can create confusion in the public domain about the process for asylum claimants, especially when it comes to the roles of the respective officials.³

Ironically, for a country with a long history of irregular migrants, studies on the topic of human smuggling are surprisingly sparse with several exceptions (Chase, Cleveland, Beatson, Rousseau, 2017; Liempt, Sersli, 2013; Quicley, 2013).

Since 9/11, however, a series of Canadian Masters theses and PhD dissertations from various disciplines - mainly from anthropology, law, history, sociology, criminology, psychology and political science - have appeared to be more qualitative in nature. Indeed, at the scholarly level, studies have employed a broad spectrum of theoretical lenses and critical analytical frames. Apparently, research is becoming more diversified and has significantly contributed to the development of knowledge around of smuggled migrants. It has also helped to bridge the gaps in the existing knowledge. Yet, in Canada and arguably Serbia, there is undoubtedly a paucity of empirical research about smuggled migrants themselves and its impacts from intersectional lenses, thereby requiring more empirical and evidence-based social justice inquiry. In looking at mainstream media such as Global News, CBC News, and various European news outlets, the issue of unauthorized migration migrant has now become a subject of public discourse, raising serious concern among human rights activists.

The currently-available Canadian literature allows authors to critically unpack some social and criminal justice issues, while also exploring some of the most salient factors of oppression in relation to Canadian policy discourse and practice for humanitarian and compassionate considerations. These issues include: (a) restrictive immigration laws and policies; (b) understanding of socio-political and economic contributors; and (c) the relationship between the detention of irregular migrants and cumulative trauma.⁴

³ See, e.g., Smuggling of migrants: the harsh search for a better life. UNODC, 2018.

⁴ Given the generic nature of the salient factors, it is assumed that the same factors could apply equally to Serbia, but it is beyond the authors' expertise to comment with any degree of authority on the matter.

3.1. Restrictive Immigration Laws and Policies

Since 2015, Canada has adopted a more restrictive approach to immigration and refugee policies. Canada has noticeably tightened its immigration laws and policies, prioritizing the acceptance of highly skilled, educated, and financially secure immigrants. While valuing the immigrants, low-skilled and/or under-skilled migrants those classified as ‘family class’ and refugees are refused permanent resident status as they are likely perceived as not being able to contribute to the national economic system (Bou-Zeid, 2007; Ellis, 2015; Hollifield, Martin, Orrenius, 2014). Arguably, the existing immigration laws and policies help to marginalize those low-skilled migrants by sending the message that they should not consider entering Canada without a legalized status. By denying migrants entry through proper channels, these policies instead create the need for the migrants to engage in irregular migration (Bou-Zeid, 2007; Ellis, 2015). Additionally, the definition of ‘family’ provided by IRPA is very narrow and oriented toward the western idea of the nuclear family: it does not include brothers or sisters, cousins, aunts, and uncles or other extended family members. Those who cannot sponsor their extended family members begin to look for other options and circumvent legal channels of entry to Canada based on the perception that there is a higher chance of gaining permanent residence through the refugee determination process. As Sersli (2009: 6) points out “the problem with Canada’s anti-smuggling legislation is that not only does it perpetuate the reasons why people turn to smugglers in the first place, but it also positions migrants within a criminal framework. Enforcing the legislation rules on a continuum of interdiction effects and border controls that arguably lead to greater demand for smuggling services”. Furthermore, government discourse about irregular migrants developed in conjunction with these transformations. On the one side, Conservative governments have historically emphasized border security issues, portraying smuggled migrants as ‘criminals’ or ‘queue jumpers’ who act illegally and therefore must be penalized. On the other side, although the Liberals have also stressed the illegality of migrant activities, they have shown less concern with border security and have instead emphasized the economic consequences of irregular migration, as migrants avoid paying taxes, take work away from capable Canadians, and in general cheat Canada’s economic system (Bou-Zeid cited in Ellis, 2015: 12).

3.2. Understanding Socio-Political and Economic Contributors

To critically understand the socio-political and economic oppression of smuggled migrants in their country of origin is fundamental. Many smuggled

migrants are exposed to extensive trauma from poverty, war, sexual orientation, and torture in their nations of origin (Chase, Cleveland, Beatson, Rousseau, 2017; Gagnon, Tuck, 2004). For instance, Manitoba immigration lawyer Bashir Khan, who represented 17 irregular migrants from Ghana, reported that eight of his clients were homosexual, which is considered a criminal offence in Ghana. They were almost murdered and thus needed to escape Ghana for their own safety (The National - Canadian Broadcasting Corporation, 2017b). Furthermore, Gagnon and Tuck (2004) claim that most irregular migrants mainly women, are exploited and have experienced rape, physical mutilation, ethnic or religious persecution, sexual slavery, and coercion, which may continue during the migration period. Bou-Zeid (2007: 305) notes that “without an accurate understanding of who these persons are and why they are in this position they become subject to scapegoating for the problems in Canadian society and immigration policy”.

Taken together, all situations are different, and those who use illegal channels to enter Canada may do so for specific reasons. Thus, it is not fair to make general comments about those who have entered to Canada through smuggling. It was contended that the penalties for unauthorized entry into Canada imposed by IRPA do not truly separate smuggling for profit and smuggling for humanitarian consideration (Crepeau, Jimenes, 2004). Therefore, it is suggested that there is a need to understand the smuggled migrants’ situations from a person-in-environment perspective while investigating human smuggling and forwarding their claimants to the concerning bodies.

3.3. The Relationship Between the Detention of Irregular Migrants and Cumulative Trauma

As noted in the previous section, Canada has adopted a very restrictive and deterrent approach to unauthorized irregular migrants through detention provision. This has cumulative impacts on their health and well-being. Detention is employed as an enforcement tool to ensure the safety, security, and integrity of Canada’s immigration and refugee protection programs (Citizenship and Immigration of Canada, 2002). According to IRPA, upon applying for asylum, an individual is detained by an officer upon entry to Canada with or without a warrant (Perrin, 2013). Detained individuals are entitled to an initial review of their detention by the Immigration Division within 48 hours, and if they are kept in detention, they are entitled to at least one further review during the 7 days following the initial review. After the initial review, subsequent reviews are conducted at least once during every 30-day period following each previous review. Further reviews take place every 6 months thereafter, for as long as the designated foreign national remains in detention (Perrin, 2013).

The provision of detention of irregular migrants has appeared to be a stressor that has significant health implications for previously-detained migrants in their post-migration environment. Most of these individuals already have psychological trauma prior to coming to Canada (Fuccini, 2009; Liempt, Sersli, 2013; Quicgley, 2013). Quicgley (2013: 26) purports “the policy of immigration detention in Canada is not reflective of the values and rights contained in the Charter of Fundamental Rights and Freedom. The prevalent use of prisons to detain irregular migrants is against the UNHCR Guidelines to Detention”. Alternatively, it was suggested that Canada considers using a case management system that respects individual human rights while also saving the government detention expenses, which is aligned with international law and reflective of Charter values.

The provision of detention not only prevents a diverse understanding about those individuals who are perceived as criminals, but also implies (perhaps unintentionally) that their claims are fraudulent and/or bogus (Liempt, Sersli, 2013). As Sirsli (2009: 10) argues “detention is a form of immigration penalty that deprives someone of his or her liberty but is not technically incarceration and thus can be accepted by liberal states”.

In a study conducted by Cleveland and Rousseau (2013) on detained vs. non-detained migrant groups, the levels of PTSD (post-traumatic stress disorder), anxiety and depression were found to be significantly higher in the detained group compared to the non-detained group, illustrating the disempowerment of irregular migrants and their subsequent vulnerability to psychological trauma. Irregular migrants have also reported feelings of fear, panic, frustration, and shame in a post-migratory period (Sirsli, 2009).

In an effort to minimize the cumulative trauma experienced by irregular migrants and promote their health and well-being, the Immigration and Refugee Board of Canada is required to explore alternative temporary shelters to incarceration. Arguably, detention of the migrants should be a last resort measure. Thus, as Quicgley (2013) advocates, the policy of mandatory detention should be abandoned, and the government, any government including that of Serbia, should revisit the policy of immigration detention as well as develop strict guidelines to better reflect the values of the Canadian Charter of Fundamental Rights and Freedoms along with the rights of obligations in International Law. In Serbia’s case, although granted the status of a candidate country in 2012 by the European Council, recent reports on Serbia show that while the country is making strides to complying with the EU standards of dealing with (illegal) migrants, that there remain a number of challenges which still need to be addressed (European Commission, 2016).⁵

5 For further discussion, see Serbia/Kosovo Events of 2017 (2018).

Conclusions and Way Forward

According to US News, in 2017, next to Switzerland, Canada was ranked the second-best country for migration for a wide range of reasons including employment opportunities, public education and public health and safety, among others (US News, 2017). However, Canada's existing immigration laws and policies focus more on skilled workers as opposed to professionals, which can limit many others from entering the country. Consequently, those individuals who are not eligible for entry to Canada under the categories of skilled immigrants sometimes circumvent legal channels and migrate to Canada with or without being aware of the results of their illegal activities. By developing anti-smuggling legal frameworks and a comprehensive approach to reducing both supply and demand of human smuggling, Canada has increased the risks and obstacles for smugglers. In addition, as a recent poll revealed, almost half of Canadians indicated that they want the irregular migrants to be deported (Nickel, Ljunggren, 2017). More interestingly, the number of people that are being intercepted at points of entry, as well as an increase of refugee claimants, do not uncover the impact of anti-smuggling measures. Undoubtedly, human smuggling is a complex social and criminal issue, and as Barnett and Bechard (2011), among others, have commented, trafficking in persons and *human smuggling* are distinct but overlapping problems that involve *complex* immigration and exploitation issue (see Barnett, Berchard, 2011; Winterdyk, Perrin, Reichel, 2012). To combat human smuggling without first understanding the motivation behind each incident is not an easy task as multiple factors are interlinked (see Kyle, Koslowski, 2013), thereby requiring international cooperation and partnerships among policy-makers, researchers, and practitioners as well as within the communities where human smuggling takes place (Chong, Clark, 2015).

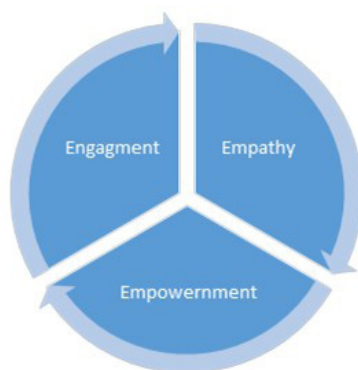


Figure 3: The 3E's approach to respond to irregular migration

Collectively, while the agenda of the Government of Canada is to focus on addressing human smuggling, it is equally important to recognize the implications for policy, research, and practice. The 3 E's approach - Engagement, Empathy, and Empowerment - as shown in Figure 3 is suggested in dealing with the issue of human smuggling especially irregular migrants. Given the ongoing migrant issue(s) in Serbia, this may be a model/framework worthy of consideration in helping to address some of its challenges.

Arguably, engaging with illegal migrants on issues related to policy, strategy formulation and research on human smuggling is fundamental. Canadian immigration officials, and perhaps Serbia, must be able to build rapport with the migrants and engage with them by creating a safe environment in which to collect more information about smugglers in countries of origin, transit procedures and the selection of destination countries. Doing so could lead Canada, and countries with similar concerns to partner with other countries and call for international cooperation. For now, the current legal frameworks in Canada should be revisited and some essential changes should be made in order to deal with the detention of irregular migrants (see Barnett, Bechard, 2011; van der Watt, van der Westhuizen, 2017). Furthermore, since the issue of sovereignty remains a controversial topic, Mountz (2004: 324) recommends that the "debates regarding sovereignty as the nation-state struggles to assert its own position on refugee movements and the policing of international borders in relation to the ever-encroaching power of its southern neighbour" need to be resolved.

Most importantly, by displaying empathy toward irregular migrants, immigration officials can *develop a better* understanding of the political unrest, socio-economic oppression, and psychological stress experienced by irregular migrants. This can allow officials to validate the experiences and feelings of these migrants in a respectable manner. By doing so, the psychological trauma experienced by the migrants, as discussed earlier, can be reduced, and they can be made to feel that their experiences are valued.

Evidently, the current Canadian literature, and to a lesser extent the Serbian literature (i.e., academic and gray) focused on smuggled migrants confirm significant gaps in knowledge. In order to address the knowledge gap on irregular migrants in Canada, research on the topic must focus not only on smugglers groups, routes, and the financial costs of the activity, but should also focus on the precarious status of irregular migrants through community-based transformative studies. More broadly, but also relevant to the Canadian situation, as suggested by Sersli (2009), researching on smuggling-related shame and the culture of criminality attributed to smuggling is another realm for further study. By using a transformative approach, an examination on whether current legal laws, policies, and strategies are working, and what needs to be done to make the frameworks more equitable and justifiable based on humanitari-

an and compassionate grounds are required. The meaningful participation of irregular migrants, especially in policy-making and research, will have a significant impact on their personal transformation, providing more empowering circumstances for them to have a voice against injustice and intersectional oppression. Social justice inquiries that seek social change and liberation of marginalized smuggled migrants are fundamental. However, researchers need to be very cautious while doing research on human smuggling as this is very sensitive topic and related to traumatic histories of violence (Maillet, Mountz, Williams, 2017: 942).

In summary, human smuggling is a socio-political construction generated and perpetuated by a range of social and structural inequalities, and thus this phenomenon needs to be understood as the intersection of multiple extortions. Canadian, and arguably Serbian, anti-smuggling legislation needs to be amended so that it reduces the marginalization of irregular unauthorized migrants and promotes their rights so that they do not feel “doubly victimized” in Canada. As the UN Deputy Secretary-General Jan Eliasson said recently migrants - regardless of where they are - need to be protected: “We need to take greater responsibility for protecting the lives of many thousands of migrants – men, women, and children – who are compelled to undertake dangerous and sometimes fatal journeys. Those forced to flee should never be denied safe-haven or rescue. Migrants, like all people, deserve protection and empathy” (United Nations, 2016).

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KRIJUMČARENJE MIGRANATA U KANADI EVENTUALNE POUKE ZA DRUGE ZEMLJE

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Sažetak: Uprkos tome što su shvaćene kao izraz čovekove želje da prevaziđe teškoće kako bi našao i živio bolji život u današnjem složenom sociopolitičkom i raznolikom svetu, migracije su postale problematična pojava u Kanadi kao i u drugim zemljama. Osim izazova pri njihovom definisanju, ilegalno kretanje ljudi nameće državama i čitav niz različitih preokupacija (na primer, prihvat i smeštaj, integracija migranata, sociokulturne barijere itd.). Definisanje i reagovanje na ilegalne migracije svakako su praćeni određenim izazovima, ali skoriji slučajevi migracija u Kanadi pružaju moguće alternative za ostvarivanje sigurnosti i bezbednosti ilegalnih migratornih kretanja ne samo u Kanadu već eventualno i na međunarodnom planu. U radu se razmatra model reagovanja i prevencije zasnovan na angažovanju, empatiji i osnaživanju (tzv. model 3E's).

Ključne reči: krijumčarenje, ilegalni migranti, azil, Kanada, ljudska prava, model „angažovanje-empatija-osnaživanje” (engagement, empathy, and empowerment, i.e. 3E's).