



# ASILE

Global Asylum  
Governance and  
the European  
Union's Role

## Country Note CANADA

International protection issues and recommendations  
from international and regional human rights mechanisms  
and bodies

Roberto Cortinovis (CEPS)

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*This Country Note provides a synthetic overview of key issues and recommendations in the field of international protection put forward by international and regional human rights mechanisms and bodies. In line with the ASILE project research agenda, this Country Note pays specific attention to aspects related to 'containment' of people in need of international protection. The notion of containment is used here to refer to a broad range of policies and practices aimed at preventing access to territory, increasing the expulsion and restricting mobility of asylum seekers and refugees.*

*The Country Note covers documents released by United Nations (UN) human rights mechanisms and bodies. These include the UN Charter-based system of human rights protection, including the Universal Period Review and the Special Procedures of the Human Rights Council, and the UN Human Rights Treaty bodies. The Note also encompasses monitoring bodies established under regional human rights systems to which the country under consideration is party.*



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## 1. International and regional human rights obligations

Canada is party to several core International human rights instruments, including the International Covenant on Civil and Political Rights (CCPR) and its two optional protocols, and the International Covenant on Economic, Social and Cultural rights (CESCR). Canada is also party to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) and to the International Convention on the Elimination of all Forms of Racial Discrimination (CERD).<sup>1</sup>

Canada acceded to the 1951 Convention relating to the Status of Refugees and its 1967 Protocol (hereinafter jointly referred to as the *1951 Convention*) in 1969. It maintains reservations to articles 23 and 24 of the 1951 Convention by interpreting “lawfully staying” as referring only to refugees admitted for permanent residence.<sup>2</sup>

Canada was invited by several human rights treaty bodies and mechanisms to ratify international instruments to which it was not yet a party, including the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (CMW) and the 1954 Convention relating to the Status of Stateless Persons. Canada has also not ratified the CAT Optional Protocol establishing a monitoring system to prevent violations of the Convention by State parties and the CESCR Optional Protocol on a complaints procedure.<sup>3</sup>

As a member of the Organisation of American States (OAS), Canada is also party of the inter-American human rights system. Canada is under an obligation to respect human rights as provided in the OAS Charter<sup>4</sup> as well as in the American Declaration of the Rights and Duties of Man.<sup>5</sup> Accordingly, Canada recognises the functions of the inter-American Commission on human rights, including its competence to formulate recommendations to member states and receive and process individual petitions. However, Canada as not ratified the American Convention on Human Rights<sup>6</sup> and has thus not recognized the jurisdiction of the inter-American Court of Human Rights. This also implies that the inter-American Commission cannot refer to the Court cases regarding Canada.<sup>7</sup>

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<sup>1</sup> Country Profile Canada, OHCHR Status of Ratification Interactive Dashboard, [online](#)

<sup>2</sup> United Nations Treaty Collection, Status of Treaties, Convention relating to the Status of Refugees Geneva, 28 July 1951 [\[online\]](#)

<sup>3</sup> Compilation on Canada Report of the Office of the United Nations High Commissioner for Human Rights, 12 March 2018, A/HRC/WG.6/30/CAN/2, par. 2.

<sup>4</sup> Charter of the Organization of American States (A-41), [\[online\]](#)

<sup>5</sup> American Declaration of the Rights and Duties of Man (Adopted by the Ninth International Conference of American States, Bogotá, Colombia, 1948) [\[online\]](#)

<sup>6</sup> American Convention on Human Rights: "Pact of San José, Costa Rica". Signed at San José, Costa Rica, on 22 November 1969 [\[online\]](#)

<sup>7</sup> Bernard Duhaime, 'Ten Reasons Why Canada Should Join the American Convention on Human Rights', *Revue générale de droit*, 49, 2019, 187–205. At the same time, the Inter-American Commission on Human Rights has in several circumstances underlined that relevant provisions of the American Declaration can be interpreted and applied in light of current developments in international human rights law, including the American Convention. In the words of the Commission: "The American Convention represents, in many instances, an authoritative



## 2. Scope of international protection and quality of asylum procedures

### 2.1. Scope of International protection

Canada's refugee system is regulated mainly by the Immigration and Refugee Protection Act (IRPA), which implements the Refugee Convention.<sup>8</sup> It consists of the Refugee and Humanitarian Resettlement Program for refugees seeking protection from outside Canada, and the in-Canada Asylum Program for persons who make their claims from inside the country.<sup>9</sup>

In December 2012 Canada completed a major reform of its refugee status determination system as a result of entry into force of the Protecting Canada's Immigration System Act, which amends to the Immigration and Refugee Protection Act =.<sup>10</sup> As underlined by UNHCR in its 2018 UPR submission, positive changes for asylum-seekers included shortened processing timelines, a new system of first instance decision-making that has resulted in higher recognition rates and the establishment of an internal appeal body, at the Immigration and Refugee Board, namely the Refugee Appeal Division (RAD).<sup>11</sup>

While recognizing positive developments brought about by the 2012 reform, the UN Human Rights Committee and the Committee against Torture expressed concerns about exceptions to the principle of non-refoulement in Canadian legislation in case of persons who are deemed inadmissible on ground of serious criminality, security, violating human or international rights or organized criminality.<sup>12</sup> The Committee against Torture, in particular, recalled that article 3 of the CAT affords absolute protection against torture to anyone in the territory of the State party, regardless of the person's character or the danger that the person may pose to society (art. 3). The Committee recommended that Canada consider

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expression of the fundamental principles set forth in the American Declaration. While the Commission clearly does not apply the American Convention in relation to member States that have yet to ratify that treaty, its provisions may well be relevant in informing an interpretation of the principles of the Declaration". See Inter-American Commission on Human Rights (IACHR), Report on the Situation of Human Rights of Asylum Seekers Within the Canadian Refugee Determination System, 2000, par. 38. See also, Inter-American Commission On Human Rights, Human Rights of Migrants, Refugees, Stateless Persons, Victims of Human Trafficking and Internally Displaced Persons: Norms and Standards of the Inter-American Human Rights System, 2015, par. 87.

<sup>8</sup> Art. 3(3)(f) of IRPA states that 'This Act should be construed and applied in a manner that complies with international human rights instruments to which Canada is signatory'. See Immigration and Refugee Protection Act, S.C. 2001, c. 27, Current to October 5, 2020 Last amended on June 21, 2019, [\[online\]](#).

<sup>9</sup> See Government of Canada, How Canada's refugee system works [\[online\]](#). For a description of Canada asylum regime see Audrey Macklin, ASILE Country Fiche Canada [\[online\]](#).

<sup>10</sup> Government of Canada, 'Refugee Reform' [\[online\]](#)

<sup>11</sup> UNHCR, Submission on Canada, Universal Periodic Review, 3<sup>rd</sup> cycle, May 2018, p.1 .

<sup>12</sup> Human Rights Committee, Concluding observations on the sixth periodic report of Canada, CCPR/C/CAN/CO/6, 2015, par. 13; C; Committee against Torture Concluding observations on the seventh periodic report of Canada, CAT/C/CAN/CO/7, 2018, par. 24.



amending subsection 115 (2) of the Act to fully comply with the principle of non-refoulement.<sup>13</sup>

The jurisprudence of UN Treaty bodies (including CAT and HRC) has also challenged exceptions that Canada's domestic law applies to the non-refoulement principle. Decisions by those UN Treaty bodies requested Canada to suspend deportation of non-citizens deemed inadmissible on security grounds to countries where they would face the risk of torture, or cruel, inhuman or degrading treatment or punishment, as such removals would be in violation of Canada's obligations under CAT and CCPR.<sup>14</sup>

Amnesty International in its 2018 submission to the Committee Against Torture underlined that both the Committee against Torture and the Human Rights Committee had on several occasions over the previous twenty-five years recommended Canada to comply with its non-refoulement obligations. Those recommendations have been disregarded by Canada which has not provided an explanation for its decision to maintain non-refoulement exceptions in Canadian law in contravention of the Convention and other international human rights obligations.<sup>15</sup>

## 2.2. Quality of asylum procedures

In its 2018 UPR submission, UNHCR underlined how the 2012 reform of Canada asylum system – while introducing a number of positive developments – also put substantial strains on the system, as asylum services had to comply with shorter timelines and inadequate funding to recruit sufficient decision-makers. UNHCR recommended that Canada increase funding and reinforce strategies to reduce the Immigration and Refugee Board's current backlog and prevent additional delays in asylum procedures.<sup>16</sup>

A number of Treaty bodies and UN agencies expressed concerns regarding the impact of Canada's so-called 'Designated Countries of Origin policy' (DCO) on the rights of asylum seekers and the availability of fair procedures. Under the DCO system – established under the 2012 asylum reform and then suspended in 2019 – asylum applicants coming from a list of 42 countries "generally considered as safe" were given shorter timeframes to make their

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<sup>13</sup> Committee Against Torture, 'Concluding Observations', CAT/C/CAN/CO/7, 21 December 2018, par. 24.

<sup>14</sup> See *Contreras v Canada*, Communication No 2613/2015, 27 March 2017; *Hamida v Canada*, Communication No 1544/2007, 18 March 2010; *Kalonzo v Canada*, Communication No 343/2008, 4 July 2012. For a legal analysis of UN Committees' jurisprudence on Canada's respect of the non-refoulement principle see Idil Atak and Lorie Giffin, *Canada's Treatment of Non-Citizens through the Lens of the United Nations Individual Complaints Mechanisms*, *Canadian Yearbook of International Law*, 56 (2019): 292-327.

<sup>15</sup> Amnesty International, *Canada Submission to the United Nations Committee Against Torture 65th Session, 12 November- 7 December 2018* [online]. The Supreme Court upheld deportation to torture in 'exceptional circumstances' in *Suresh v. Canada (Minister of Citizenship and Immigration)*, [2002] 1 SCR 3; the Ontario Court of Appeal upheld deportation in the face of a request for interim measures by the Human Rights Committee in *Ahani v. Canada (Attorney General)*, (2002) 58 O.R. (3d) 107.

<sup>16</sup> UNHCR, *Submission on Canada, Universal Periodic Review, 3<sup>rd</sup> cycle, May 2018*, p.4.



refugee claims in comparison to applicants from non-DCO countries.<sup>17</sup> In addition, claimants from countries included in the list were subject to a 6-month bar on work permits, a bar on appeals at the Refugee Appeals Division, limited access to the Interim Federal Health Program and a 36-month bar on the Pre-Removal Risk Assessment (PRRA).<sup>18</sup>

In its 2015 Concluding Observations on the sixth periodic report of Canada, the Human Rights Committee expressed concern that nationals of DCOs were denied an appeal hearing against a rejected refugee claim before the Refugee Appeal Division and were only allowed judicial review before the Federal Court, thus increasing the risk that those individuals may be subjected to refoulement.<sup>19</sup> Canada was recommended to eliminate the DCO regime to ensure that all asylum-seekers have equal access to the same asylum procedure.<sup>20</sup>

In May 2019 Canada decided to remove all countries from DCO list, effectively suspending the DCO policy until it can be repealed through future legislative changes. The decision came after several Federal Court decisions struck down certain provisions of the DCO policy, ruling that they did not comply with the Canadian Charter of Rights and Freedoms.<sup>21</sup>

### **3. Admission to the territory and safeguards against removal of asylum seekers and refugees**

In 2004 the Canadian and US governments concluded the Agreement related to cooperation in the examination of refugee status claims from nationals of third countries (the Safe Third Country Agreement).<sup>22</sup> Under the agreement, refugee claimants who present themselves at a Canada-US border post seeking to make a refugee claim in Canada are, with limited exceptions, denied access to the Canadian refugee system and immediately returned to the United States. As the agreement does not apply to people who cross the border irregularly and later present themselves to Canadian officials, people in need of safety in Canada have in recent years been crossing in significant numbers in between border posts.<sup>23</sup>

The Committee on the Elimination of Racial Discrimination noted in 2017 that as a consequence of the limitations in the Safe Third Country Agreement a sharp rise had been reported in the number of asylum seekers attempting to enter the Canada through

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<sup>17</sup> Ibid.

<sup>18</sup> Government of Canada News Release, Canada ends the Designated Country of Origin practice, May 17 2019 [[online](#)]; See also Government of Canada, Designated countries of origin policy – archived [[online](#)]

<sup>19</sup> Human Rights Committee, Concluding observations Canada, 2015, CCPR/C/CAN/CO/6, par. 12.

<sup>20</sup> UNHCR, Submission for Universal Periodic Review: 3rd Cycle, 2018; Human Rights Committee, Concluding observations on the sixth periodic report of Canada, CCPR/C/CAN/CO/6, par. 12.

<sup>21</sup> Government of Canada News Release, Canada ends the Designated Country of Origin practice, May 17 2019 [[online](#)]

<sup>22</sup> Government of Canada, Canada-U.S. Safe Third Country Agreement [[online](#)]

<sup>23</sup> OHCHR, Summary of Stakeholders' submissions on Canada, Universal Periodic Review, 3<sup>rd</sup> cycle, 7 March 2018, A/HRC/WG.6/30/CAN/3, par. 75; see also A. Macklin, ASILE Country Fiche Canada.



irregular border crossings, in dangerous or life-threatening conditions. The Committee recommended that Canada rescind or at least suspend the Safe Third Country Agreement to ensure that all individuals who attempted to enter Canada through a land border were provided with equal access to asylum proceedings.<sup>24</sup>

In its 2018 Concluding observations, the Committee Against Torture took note of the statement made by Canadian authorities that the United States remains a safe country for asylum claimants to seek and obtain protection when they meet the definition of a refugee. However, the Committee expressed concern at the notable recent increase in the number of individuals in the United States wishing to seek asylum in Canada in an attempt to flee aggressive anti-immigration policies. The Committee also underlined that because of the Safe Third Country Agreement many individuals enter the State party at unofficial border crossings, often putting themselves at risk, since they would be turned back at official crossings.<sup>25</sup>

The Committee recommended that the Canadian government consider undertaking an assessment of the impact of the STCA on potential asylum seekers arriving from the United States who currently fear deportation and may have well-founded grounds, on the basis of their personal circumstances, to be considered for asylum.<sup>26</sup>

Since its conclusion in 2004, the STCA and its underlying premise that asylum seekers may be returned to the U.S. without an individualized assessment of their protection needs, have been challenged a number of times in both Canadian and regional justice venues. In the 2011 case *John Doe et al v. Canada*, the Inter-American Commission on Human Rights ruled that Canada violated its human rights obligations by returning asylum seekers to the United States without providing individualized reviews of their protection needs. While the IACHR decision did not directly address the application of the STCA, the Commission concluded that “before removing a refugee claimant to a third country, a Member State must conduct an individualized assessment of a refugee claimant’s case, taking into account all the known facts of the claim in light of the third country’s refugee laws. If there is any doubt as to the refugee claimant’s ability to seek asylum in the third country, then the Member State may not remove the refugee claimant to that third country.”<sup>27</sup>

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<sup>24</sup> Committee on the Elimination of Racial Discrimination, Concluding Observations on Canada, 13 September 2017 CERD/C/CAN/CO/21-23, par. 33.

<sup>25</sup> Committee Against Torture, Concluding Observations on Canada, 21 December 2018, CAT/C/CAN/CO/7, par. 32-33.

<sup>26</sup> *Ibid.*

<sup>27</sup> *John Doe et al v. Canada*, Report N. 78/11 - Case 12.586, Inter-American Commission on Human Rights (IACHR), 21 July 2011, <https://www.refworld.org/cases,IACHR,502b61572.html>. As specified by the Commission in its analysis of relevant case-law, “summary deportation proceedings or so-called direct-back policies run counter to the guarantees of due process as they deprive migrants, asylum seekers, or refugees the right to a hearing, to defend their rights adequately, and to challenge their expulsion”. See Inter-American Commission on Human Rights, Norms and Standards of the Inter-American Human Rights System, par. 310 [\[online\]](#).



In a 2007 ruling, the Federal Court of Canada overturned the STCA on several grounds, including that the U.S. did not comply with Article 33 of the Refugee Convention and Article 3 of the Convention Against Torture.<sup>28</sup> The ruling was reversed on appeal to the Federal Court of Appeal in 2008 on procedural grounds, which allowed for the STCA to remain in force.<sup>29</sup>

In July 2017, Amnesty International, along with the Canadian Council of Refugees, the Canadian Council of Churches, joined by individual applicants from El Salvador, Ethiopia, and Syria, launched another application in Canada's Federal Court to strike down the application of the STCA.<sup>30</sup> In July 2020, the Federal Court ruled that sending asylum claimants back to the US in application of the STCA violates Section 7 of the Canadian Charter of Rights and Freedoms (right of liberty, freedom and security) because asylum seekers are systematically detained in the US in cruel and unusual conditions, exposed to a risk of *refoulement* and prevented from asserting a claim to asylum.<sup>31</sup> The Court suspended the effect of its decision for six months to leave time for Parliament to respond.<sup>32</sup> In August 2020 the Government of Canada filed an appeal to the Federal Court of Appeal against the decision of the Federal Court.<sup>33</sup> According to the Canadian government, based on reviews of the situation in the US, the latter continues to satisfy the criteria upon which it was designated as a safe third country. Canadian authorities concluded that STCA remains a comprehensive vehicle to help accomplish a fair and orderly refugee protection system, "based on the principle that people should claim asylum in the first safe country in which they arrive".<sup>34</sup>

## 4. Detention and restrictions to freedom of movement

UN monitoring bodies and institutions as well as independent stakeholders contributing to the Universal periodic review process have repeatedly underlined a number of aspects of Canada's immigration detention regime that fail to meet international standards and ensure independent oversight.<sup>35</sup>

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<sup>28</sup> *Canadian Council for Refugees v R*, 2007 FC 1262, [2008] 3 FCR 606, paras 161, 262 and 273.

<sup>29</sup> *Canadian Council for Refugees v Canada*, 2008 FCA 229.

<sup>30</sup> Amnesty International, Building Hope, Addressing Injustice. Amnesty International's 2019 Human Rights Report Card and Agenda for Canada, p. 31, [https://www.amnesty.ca/sites/default/files/Amnesty\\_HRA\\_2018-19\\_final\\_ENG.pdf](https://www.amnesty.ca/sites/default/files/Amnesty_HRA_2018-19_final_ENG.pdf)

<sup>31</sup> The Canadian Council for Refugees et al v Minister for Immigration and Minister for Public Safety, 2020 FC 770, Canada: Federal Court, 22 July 2020, [https://www.refworld.org/cases/CAN\\_FC,5f1988484.html](https://www.refworld.org/cases/CAN_FC,5f1988484.html)

<sup>32</sup> Amnesty International Canada, Organizations welcome Federal Court decision confirming that sending refugees back to the US is not safe, July 22, 2020, <https://www.amnesty.ca/news/organizations-welcome-federal-court-decision-confirming-sending-refugees-back-us-not-safe>

<sup>33</sup> Government of Canada to appeal the Federal Court decision on the Safe Third Country Agreement, 21 August 2020 [[online](#)]; A. Macklin, ASILE Country Fiche Canada.

<sup>34</sup> Committee on the Elimination of Racial Discrimination, Information received from Canada on follow-up to the concluding observations, 17 June 2019, CERD/C/CAN/CO/21-23/Add.1., par. 23-29.

<sup>35</sup> UNHCR, Submission for the compilation Report Universal Periodic Review: 3rd Cycle, 2018, p.1; Human Rights Committee, Concluding observations on the sixth periodic report of Canada, CCPR/C/CAN/CO/6, par. 12; Committee on the Elimination of Racial Discrimination, Concluding observations on the combined twenty-first to twenty-third periodic reports of Canada CERD/C/CAN/CO/21-23, par. 33; Concluding observations on the seventh periodic report



Key issues were summarised by the Committee against Torture in its 2018 Concluding observations on the seventh periodic report of Canada. The Committee noted with concern that Canada continued to use mandatory detention for non-citizens specifically labeled as ‘designated foreign nationals’ under the Immigration and Refugee Protection Act because of the irregular mode of arrival.. Concern was also expressed about immigration detention more generally in relation to the absence of an effective mechanism to review the lawfulness of detention, the indeterminacy of detention, the inadequate medical and mental health-care services in federal immigration detention facilities, and the reliance on provincial maximum security correctional centres.<sup>36</sup>

Furthermore, while existing legislation provides that minors should only be detained in exceptional circumstances, the Committee indicated that during the period under review children continued to be placed in immigration detention with no right to independent review of their detention. The Committee also expressed concern about the lack of an independent mechanism for oversight of the Canada Border Service Agency, which is responsible for immigration detention.

The Committee recommended Canada to review its legislation with a view to repealing provisions in its immigration legislation requiring the mandatory detention of ‘designated foreign nationals’ and to establish a reasonable time limit on the duration of administrative immigration detention. It further recommended Canada to guarantee judicial review or other meaningful and effective avenues to challenge the legality of administrative immigration detention and to establish an effective and independent oversight mechanism of the Canada Borders Services Agency to which individuals held in immigration detention can bring complaints.<sup>37</sup>

In 2016, Canada launched a new National Immigration Detention Framework which aims to reduce the number of minors, vulnerable persons and long-term detainees in detention. In July 2018, the Government unveiled the Alternative to Detention (ATD) Program, in partnership with a number of community organizations, which allowed for the

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of Canada CAT/C/CAN/CO/7, par. 34-35.; Summary of Stakeholders’ submissions on Canada Report of the Office of the United Nations High Commissioner for Human Rights, 7 March 2018, A/HRC/WG.6/30/CAN/3, par. 83-84; See also Human Rights Council, Working Group on Arbitrary Detention Opinions adopted by the Working Group on Arbitrary Detention at its sixty-ninth session (22 April–1 May 2014) No. 15/2014 (Canada), Communication addressed to the Government on 13 February concerning Michael Mvogo, A/HRC/WGAD/2014/15; Opinions adopted by the Working Group on Arbitrary Detention at its eighty-fourth session, 23 April–3 May 2019 Opinion No. 7/2019 concerning Ebrahim Toure (Canada), A/HRC/WGAD/2019/7.

<sup>36</sup> Committee Against Torture, Concluding observations on the seventh periodic report of Canada CAT/C/CAN/CO/7, par. 34-35.

<sup>37</sup> Ibid.





establishment of an expanded set of tools and mechanisms that enable migration officers to more effectively release individuals into the community.<sup>38</sup>

While welcoming the steps taken by the State party to undertake planned immigration detention reforms, UN treaty bodies and civil society stakeholders have pointed to a number of remaining issues of concern. In particular, the Committee on the Elimination of Racial Discrimination underlined that Canada has not taken any measures to establish a legal time limit on the detention of migrants and has not formally prohibited the use of immigration detention of children.<sup>39</sup> In addition, civil society stakeholders have underlined that an independent oversight mechanism to receive complaints and investigate allegations of misconduct from Canada Border Services Agency has not been brought forward by the government.<sup>40</sup>

## 5. Other key protection issues

### 5.1. Stateless persons

Canada has not acceded to the *1954 Convention relating to the Status of Stateless Persons*. UNHCR noted that Canada does not have a specific procedure or legal framework for the determination of statelessness, which makes it difficult to identify stateless persons and to ensure the enjoyment of their basic human rights.

The Canadian government has justified the lack of a specific legal framework to address statelessness by arguing that the refugee determination system, or an application for permanent residence based on humanitarian and compassionate (H&C) considerations, adequately responds to the situation of stateless persons. However, UNHCR noted that the H&C process does not contain statelessness among the criteria upon which permanent residence status must be granted and, therefore, H&C claims submitted by stateless persons are often rejected.<sup>41</sup>

Canada's Citizenship Act stipulated that the Minister of Immigration may, at his or her discretion, grant citizenship to any person to alleviate cases of statelessness or of special and unusual hardship. However, according to stakeholders' contributions to the UPR, the

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<sup>38</sup> Committee on the Elimination of Racial Discrimination, Concluding observations on the combined twenty-first to twenty-third periodic reports of Canada Information received from Canada on follow-up to the concluding observations, 17 June 2019, CERD/C/CAN/CO/21-23/Add.1, par. 16-20.

<sup>39</sup> Committee on the Elimination of Racial Discrimination, Follow-up letter sent to the State party, 13 December 2019, CERD/100th session/FU/MJA/ks, p. 3.

<sup>40</sup> Amnesty International, Submission to the United Nations Committee Against Torture, 65<sup>th</sup> Session, 12 November-7 December 2018, p. 16.

<sup>41</sup> UNHCR, Submission for the Universal Periodic Review: 3rd Cycle, May 2018, p. 3. It should however be mentioned that statelessness is included in the guidance for Canada's immigration officers as a factor to be considered when deciding whether permanent residence should be granted for humanitarian and compassionate reasons. See: Government of Canada, 'The humanitarian and compassionate assessment: Statelessness' [\[online\]](#).



lack of a statelessness determination procedure and a legal definition of statelessness in national legislation left the Minister with wide discretionary powers to determine who was considered stateless and whether to ever grant these applications. While amendments to the Citizenship Act were introduced in 2016 to add statelessness as a stand-alone ground that can be considered for a discretionary grant of citizenship, the Bill still does not address the lack of a statelessness definition or statelessness determination procedure.<sup>42</sup>

Without a legal status in Canada, stateless persons have limited access to education, employment and social benefits. For example, stateless children who are in Canada without a status may not have access to free elementary education because they do not meet provincial residency requirements. Moreover, stateless persons who cannot be removed due to the absence of travel documents remain in a legal limbo for several years without proper access to employment, free education, health services, or social assistance. If detained, they face a higher risk of being subject to indefinite detention given the inability to carry out their removal from Canada.<sup>43</sup>

UN Treaty bodies recommended that the Government of Canada to accede to the 1954 *Convention relating to the Status of Stateless Persons* and establish a statelessness determination procedure and a protected “stateless person status” which would enable stateless persons to work, study, access healthcare and social assistance, acquire travel documents, and apply for permanent residence, and would reduce their risk to be subject to indefinite detention and removal.<sup>44</sup>

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<sup>42</sup> OHCHR Summary of Stakeholders’ submissions on Canada, A/HRC/WG.6/30/CAN/3, par. 86.

<sup>43</sup> Jocelyn Kane, *Statelessness in Canada A study on the situation of stateless persons in Canada*, paper commissioned by UNHCR, p. iv [[online](#)]

<sup>44</sup> UNHCR, Submission for Report Universal Periodic Review: 3rd Cycle, 30th Session CANADA, May 2018. p.3.



## Annex 1. Methodological Note

Human rights systems at the international and regional levels have established a range of mechanisms and bodies to monitor and promote states' compliance with their treaty obligations.

This Country Note describes key issues and recommendations in the field of asylum and international protection highlighted by international and regional human rights bodies in the context of existing monitoring and reporting procedures. In so doing, this Country Note complements research conducted under the ASILE project, in particular Country Fiches as well as the Catalogue of International and Regional Legal Standards.<sup>45</sup>

The Country Note is based on desk research covering reports, documents and observations provided for by the following human rights monitoring mechanisms and bodies:

- The United Nations Charter-based system of human rights protection, including the Universal Periodic Review Process (UPR)<sup>46</sup> and the Special Procedures of the UN Human Rights Council;<sup>47</sup>
- UN human rights Treaties Bodies tasked with monitoring the implementation of provisions of the core international human rights treaties;<sup>48</sup>
- Human rights monitoring bodies established under relevant regional human rights systems to which the Country under consideration is party. These may include, depending on the country under consideration, bodies of the Council of Europe Human Rights system,<sup>49</sup> the Inter-American Human Rights System,<sup>50</sup> the African Human Rights system,<sup>51</sup> and the League of Arab States human rights system.<sup>52</sup>

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<sup>45</sup> See ASILE, Our research [\[online\]](#)

<sup>46</sup> OHCHR, Basic facts about the UPR [\[online\]](#)

<sup>47</sup> OHCHR, Special Procedures of the Human Rights Council [\[online\]](#)

<sup>48</sup> OHCHR, Monitoring the core international human rights treaties [\[online\]](#)

<sup>49</sup> See the website of the Council of Europe [\[online\]](#)

<sup>50</sup> See Inter-American Commission on Human Rights [\[online\]](#)

<sup>51</sup> See African Commission on Human and Peoples' Rights [\[online\]](#)

<sup>52</sup> See Arab Human Rights Committee [\[online\]](#)



## Annex 2 - Canada: Selected documents from International and Regional Human Rights Monitoring Bodies

### 1. United Nations Charter-based bodies

#### Universal Periodic Review 3rd cycle (2018)

- National report National report submitted in accordance with paragraph 5 of the annex to Human Rights Council resolution 16/21 – Canada, 3 April 2018, A/HRC/WG.6/30/CAN/1 [[online](#)]
- Compilation of UN Information, Canada. Report of the Office of the United Nations High Commissioner for Human Rights, 12 March 2018, A/HRC/WG.6/30/CAN/2 [[online](#)]
- Summary of Stakeholders' submissions on Canada, 7 March 2018, A/HRC/WG.6/30/CAN/3 [[online](#)]
- Report of the Working Group on the Universal Periodic Review – Canada, 11 July 2018, A/HRC/39/11 [[online](#)]

### 2. UN Treaty Bodies

#### Human Rights Committee (CCPR)

- Concluding observations on the sixth periodic report of Canada, 13 August 2015, CCPR/C/CAN/CO/6 [[online](#)]

#### Committee on Economic, Social and Cultural Rights (CESCR)

- Concluding observations on the sixth periodic report of Canada, 23 March 2016, E/C.12/CAN/CO/6 [[online](#)]

#### Committee on the Elimination of Racial Discrimination (CERD)

- Concluding observations on the combined twenty-first to twenty-third periodic reports of Canada, 13 September 2017, CERD/C/CAN/CO/21-23 [[online](#)]
- Concluding observations on the combined 21st to 23rd periodic reports of Canada : Committee on the Elimination of Racial Discrimination : addendum. Information received from Canada on follow-up to the concluding observations, CERD/C/CAN/CO/21-23/Add.1, June 2019 [[online](#)].
- Committee on the Elimination of Racial Discrimination, Follow-up letter sent to the State party, 13 December 2019, CERD/100th session/FU/MJA/ks [[online](#)]

#### Committee against Torture (CAT)

- Concluding observations on the seventh periodic report of Canada, 21 December 2018, CAT/C/CAN/CO/7 [[online](#)]

#### Committee on the Elimination of Discrimination Against Women (CEDAW)



- Concluding observations on the combined eighth and ninth periodic reports of Canada. 25 November 2016, CEDAW/C/CAN/CO/8-9 [[online](#)]

### 3. Other UN bodies

#### UNHCR

- UNHCR Submission on Canada: 30th UPR session, May 2018 [[online](#)]
- Jocelyn Kane, Statelessness in Canada. A study on the situation of stateless persons in Canada, paper commissioned by UNHCR [[online](#)]

### 4. Regional Human Rights Bodies

#### Inter American Commission on Human Rights

- Report on the Situation of Human Rights of Asylum Seekers within the Canadian Refugee Determination System," OEA/Ser.L/V/ II.106, doc. 40 (2000) [[online](#)]
- *John Doe et al v. Canada*, Report N. 78/11 - Case 12.586, Inter-American Commission on Human Rights (IACHR), 21 July 2011 [[online](#)]

### 5. Civil Society organizations

- Amnesty International submission for the UN Universal Periodic Review 30<sup>th</sup> Session of the UPR Working Group, May 2018 [[online](#)]
- Amnesty International, Canada Submission to the United Nations Committee Against Torture 65th Session, 12 November- 7 December 2018 [[online](#)]
- Amnesty International, Building Hope, Addressing Injustice. Amnesty International's 2019 Human Rights Report Card and Agenda for Canada [[online](#)]
- British Columbia Civil Liberties Association, Oversight at the border. A model for Independent Accountability at the Canada Border Services Agency (written by Laura Track and Josh Paterson), June 2017 [[online](#)]
- Canadian Centre on Statelessness, Institute on Statelessness and Inclusion. Joint Submission to the Human Rights Council at the 30th Session of the Universal Periodic Review, Canada, 2017 [[online](#)]
- Colour of Poverty - Colour of Change et al. joint UPR submission, October 2017 [[online](#)]
- University of Toronto Faculty of Law et al. Rights Violations Associated with Canada's Treatment of Vulnerable Persons in Immigration Detention, Joint Submission to the Working Group on Universal Period Review to assist in its review of Canada, 30<sup>th</sup> Session (April – May, 2018) [[online](#)]