Canadian Council for Refugees | Conseil canadien pour les réfugiés

# Submission to the UN Human Rights Committee on Canada's compliance with the International Covenant on Civil and Political Rights

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## A. Introduction

The Canadian Council for Refugees (CCR) is a leading voice for the rights, protection, sponsorship, settlement, and well-being of refugees and migrants in Canada and globally.

The CCR brings forward the concerns and experiences of its over 200 member organizations working with, from and for refugee and other newcomer communities from coast to coast to coast.

The CCR highlights for the Committee that accessing civil and political rights in Canada is significantly harder for non-citizens. The CCR observes that many current and proposed legal measures in Canada undermine access to asylum and create gaps in human rights protection for vulnerable migrants. Many of these gaps are in flagrant violation of Canada's commitments under the International Covenant on Civil and Political rights. This submission highlights only a few of the many concerns the CCR has with respect to the rights of refugees and other vulnerable migrants in Canada.

## B. Summary and Recommendations

Canada - US Safe Third Country Agreement (Articles 2, 6, 7, 9, 10, 17, 23 and 24)

The designation of the United States of America (USA) as a safe country in the Safe Third Country Agreement (STCA) forces refugee claimants who may otherwise be in transit to Canada to seek protection in the USA where they face serious human rights violations, including exposure to "chain refoulement".

The Canadian Council for Refugees recommends that the State Party:

1. Immediately withdraw from the Safe Third Country Agreement (STCA) with the USA. We request that the Committee make this a priority recommendation, subject to follow-up.

2. Allow asylum seekers that have been removed to the USA to return to Canada and proceed with refugee claims.

3. Implement transparency in the initial and ongoing designation of safe third countries.

4. Carry out public consultations with civil society organizations when reviewing the designation of countries as safe third countries.

5. Provide the Human Rights Committee with timely, detailed, evidence-based substantive reasons for continuing to designate the USA as a safe country.

Bill C-12, Strengthening Canada's Immigration System and Borders Act (Articles 2, 6, 7, 9 and 13)

The CCR submits that the measures proposed by the Canadian Government in Bill C-12 arbitrarily restrict access to refugee determination. Contrary to the government's claim, Bill C-12 will create more

inefficiencies and increase pressure on the refugee system. Moreover, these measures are not aligned with the purpose and principles of Canada's Immigration and Refugee Protection Act (IRPA) nor do they comply with Canada's international obligations under the 1951 Refugee Convention, the 1967 Protocol, or the Convention Against Torture, and they violate ICCPR Articles 2, 6, 7, 9 and 13.

The Canadian Council for Refugees recommends that the State Party:

6. Withdraw or repeal Bill C-12.

7. Amend the IRPA to provide that none of the ineligibility provisions in the bill apply to prevent applicants from accessing a refugee determination procedure.

8. Conduct a wholesale review of the IRPA to ensure that all sections affecting refugees and migrants comply with Canada's obligations under the Refugee Convention and the ICCPR.

Refugee Cessation (Articles 6, 7, 9,12,17, 23 and 26)

In 2012 Canada amended the Immigration and Refugee Protection Act (IRPA) to attach harsh consequences to a finding of cessation of refugee protection. Since that time, a finding that protection has ceased under ss. 108(1)(a)(d) of the IRPA is accompanied by an automatic loss of permanent resident status, inadmissibility without any procedural protections, and a real risk of removal from Canada. These provisions have subjected refugees to cruel and unusual treatment, arbitrary interference with privacy, their family and home, as well as creating risk to their life through the real possibility of refoulement. Cessation may occur merely because a refugee renewed the passport from their country of origin or visited a sick or dying relative in that country. The refugees who are targeted by these provisions have often lived in and contributed to Canada for years before Canada attempts to strip them of all status and often have a spouse or children who are Canadian citizens. The provisions serve no clear purpose and violate ICCPR Articles 6, 7, 9, 12, 17, 23 and 26.

The Canadian Council for Refugees recommends that the State Party:

9. Immediately repeal ss. 40.1 and 46(1)(c.1) of IRPA and s. 228(1)(b.1) of the Immigration and Refugee Protection Regulations and restore the status of any permanent resident who lost it pursuant to those provisions.

Immigration Detention (Articles 2, 6, 7, 9, 10, 17, 23, 24 and 26)

Canada's immigration detention regime is incompatible with its obligations under the ICCPR. Non-citizens in Canada, including children and other vulnerable migrants, are subject to arbitrary, indeterminate and discriminatory deprivation of liberty in punitive conditions. Systemic racism and disability discrimination compound these violations, and detention causes profound mental health, family and intergenerational harms, including multiple deaths in custody. The CCR underscores the lack of effective remedies, uneven access to habeas corpus, delayed and limited oversight, and the absence of a national monitoring mechanism. Legislative and institutional reforms are urgently needed to end

immigration detention and, in the short term, to constrain its scope and duration and strengthen safeguards, monitoring and accountability.

The Canadian Council for Refugees recommends that the State Party:

10. Pending abolition of immigration detention, enact a clear, short, non-derogable statutory maximum period for immigration detention, after which detention must end, and individuals must be released to community-based arrangements.

11. Amend the law to end arbitrary detention (unreviewable decisions to detain on identity or suspicion of inadmissibility).

12. Recognize in law and policy that race, disability and intersecting vulnerabilities are factors strongly favouring release, and collect and publish race- and disability-disaggregated immigration detention data to monitor discrimination.

13. End the detention of children under immigration legislation and preserve children's right to family unity by not detaining accompanying parents and guardians (legal or de facto).

14. Repeal the provisions in the 2024 Budget Implementation Act authorizing "immigrant stations" in federal correctional facilities and prohibit use of provincial or federal jails and other criminal justice facilities for immigration detention.

15. Fully implement recommendations from domestic inquests and international bodies, including those from the Abdurahman Hassan inquest and the Working Group on Arbitrary Detention's country visit, with clear timelines and public reporting.

16. Ratify the Optional Protocol to the Convention against Torture and establish a robust national preventive mechanism with an explicit mandate to visit all immigration detention facilities and related places of deprivation of liberty.

17. Adopt the foregoing measures as preparatory stages to the end of the use of immigration detention and its replacement with rights-respecting, community-based mechanisms to support participation in immigration and refugee processes.

## C. Canada's Safe Third Country Agreement ("STCA") with the United States of America (USA) (Articles 2, 6, 7, 9, 10, 17, 23 and 24)

By mandating return to the United States of America (USA) for many asylum seekers, Canada's STCA regime creates a foreseeable risk of refoulement; rights-violating detention; and interference with families in a manner that disproportionately impacts marginalized groups, contrary to ICCPR Arts. 2, 6, 7, 9, 10, 17, 23 and 24.

Brief Overview of the STCA and its Litigation History

The Canada-US Safe Third Country Agreement (STCA) is a bilateral treaty that has been in effect since December 2004. It is premised on the notion that both countries are safe for refugees. Therefore, it requires most refugee claimants to claim protection in the first of the two countries they arrive in. It prohibits those entering from the USA at land borders from claiming asylum in Canada, with a few exceptions.[1] In March 2023, the agreement was expanded to include the entire land border, including internal waterways.

Early legal challenges to the STCA were undertaken without success.[2] In 2017, a new legal challenge was undertaken that spanned five years of litigation.[3] In that most recent litigation, the Supreme Court of Canada based its judgment on the facts as they existed at the outset of the litigation, specifically the finding that detention of asylum seekers in the USA was not 'automatic' or routine. The Court ruled that the USA was generally safe, any individual or limited class exceptions could be managed through alleged "safety valves" in Canadian legislation.[4] The Court found that these curative measures, including administrative deferrals of removal, temporary resident permits, humanitarian and compassionate exemptions and public policy exemptions would prevent claimants' removal to the USA, mitigating the risk of *refoulement* from the USA.

Under s.102(2)(k) of the Immigration and Refugee Protection Act (IRPA), the criteria for designating the United States as safe requires consideration of, *inter alia*, its policies and practices with respect to claims under the Refugee Convention, with respect to its obligations under the Convention Against Torture and its human rights record.

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[1] The STCA exceptions applied by Canada: a claimant must have an eligible family member in Canada with the required status; or be an unaccompanied minor under 18 years of age; or have a valid visa, work permit or study permit; or be charged with a death penalty offence in the USA or another country; or be a stateless person who has habitually resided in the USA. See, Government of Canada, "Canada-US Safe Third Country Agreement" (27 March 2023), online: <https://www.canada.ca/en/immigration-refugees-citizenship/corporate/mandate/policies-operational-instructions-agreements/agreements/safe-third-country-agreement.html>.

[2] An early challenge in 2007 resulted in the Federal Court ruling that the agreement was invalid (*Canadian Council for Refugees v Canada (FC),* 2007 FC 1262). However, this was overturned by the Federal Court of Appeal (*Canadian Council for Refugees v Canada (FCA),* 2008 FCA 229). The Supreme Court declined to hear the case in 2009 (*Canadian Council for Refugees, Canadian Council of Churches, Amnesty International and John Doe v Her Majesty the Queen,* 2009 SCC 4204).

[3] In 2020, the Federal Court ruled the *STCA* unconstitutional on the basis that returning refugees to the USA led to detention and infringed their s. 7 Charter rights (*Canadian Council for Refugees v Canada (IRC),* 2020 FC 770). In 2021, the Federal Court of Appeal reversed the ruling and upheld the STCA's constitutionality (*Canada (Citizenship and Immigration) v Canadian Council for Refugees,* 2021 FCA 72). In 2023, the Supreme Court of Canada allowed the appeal in part (*Canadian Council for Refugees v Canada (Citizenship and Immigration),* 2023 SCC 17). It ruled that the agreement was constitutional but remitted the case back to the lower court to adjudicate the challenge on s. 15 of the Charter as this aspect had not been decided by either of the lower courts.

[4] See, *Canadian Council for Refugees v Canada (Citizenship and Immigration)*, 2023 SCC 17. Another mechanism is the Pre-Removal Risk Assessment (PRRA).

Canada's Responsibility for "Chain Refoulement" to the USA

The USA's current treatment of asylum seekers breaches rights protected by the ICCPR, including but not limited to the right to *non-refoulement.* By forcibly returning asylum seekers to the United States, Canada violates its own obligations under the ICCPR and international law.

In 2004, the Human Rights Committee (HRC) interpreted the Article 2 obligation as entailing an obligation not to deport, expel or otherwise remove a person where there are substantial grounds for believing that there is a real risk of irreparable harm either in the country where removal is to be effected or in any country to which the person may be subsequently removed.[5] The "chain refoulement" prohibition has been confirmed in landmark rulings.[6]

This interpretation on "chain refoulement" has been subsequently re-affirmed by the HRC. In 2022, the HRC expressed regret that Norway had not amended its Immigration Act to ensure greater protection of asylum seekers from refoulement and "chain refoulement" and repeated its call to do so.[7]

Recently, United Nations Special Procedures mandate holders[8] and the Inter-American Commission on Human Rights (IACHR) re-affirmed the principle that where states enter into bilateral agreements with third countries permitting the removal or transfer of non-citizens, both states retain responsibility under

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[5] UN Human Rights Committee, "General Comment No. 31" (29 March 2004) at para 12, online: <https://hrlibrary.umn.edu/gencomm/hrcom31.html>; See also: UN Human Rights Committee, "General Comment No. 36" (3 September 2019) at para 31, online: <https://www.refworld.org/legal/general/hrc/2019/en/123145>.

[6] In *M.S.S. v Belgium and Greece*, [GC], App No 30696/09, (2011) 53 ECHR 108 (also reported in (2011) 53 EHRR 2), the Grand Chamber of the European Court of Human Rights ruled that transferring asylum seekers to Greece under the Dublin Regulation violated the European Convention on Human Rights due to inhumane conditions and flawed asylum procedures. It suspended "Dublin" returns to Greece and established that member states must verify safe conditions before deporting asylum seekers to a third country. The Court ruled that a state always has the responsibility to verify conditions, treatment and legal safeguards to which an asylum seeker will be subjected if transferred to another state. The Court also held that the transferring state was responsible for the mistreatment the asylum seeker was subjected to in the receiving state. See also: *Hirsi Jamaa and Others v Italy*, [GC], App No 27765/09, (2012) at paras 146-147.

[7] The United Nations Office at Geneva, "*Human Rights Committee Adopts Report on Follow-up to its Concluding Observations*" (18 March 2022), online: <https://www.ungeneva.org/en/news-media/meeting-summary/2022/03/human-rights-committee-adopts-report-follow-its-concluding>.

[8] Siobhán Mullally, "*UN Special Rapporteur on trafficking in persons, especially women and children*" (June 2023), online: <https://www.ohchr.org/en/special-procedures/sr-trafficking-in-persons>; See also Gehad Madi, "*UN Special Rapporteur on human rights of migrants*" (4 August 2025), online: <https://www.ohchr.org/en/documents/thematic-reports/a80302-report-special-rapporteur-human-rights-migrants-gehad-madi>; See also Matthew Gillett, "*UN Working Group on Arbitrary Detentions*" (24 May 2024), online: <https://www.ohchr.org/sites/default/files/documents/issues/detention-wg/statements/20240524-wgad-eom-ca-pf.pdf>; See also Jorge Contesse et al., "*Report of the Committee against Torture*" (2 May 2025), online: <https://docs.un.org/en/A/80/44>.

relevant international law for the human rights consequences, including arbitrary detention, torture or cruel, inhuman or degrading treatment, and chain refoulement.[9]

Evidence that the USA is Not a Safe Third Country

The following features of US law, policy and practice, adopted after President Donald Trump assumed office in January 2025, demonstrate that the United States is not presently safe for those seeking refugee protection. This environment forces people to cross irregularly into Canada at great risk and, at times, results in tragic deaths.[10]

Erosion of the Principle of *Non-Refoulement* (Articles 6 and 7)

a) In recent ICE (Immigration and Customs Enforcement) raids, **asylum seekers with pending asylum cases have been arrested** in aggressive, and at times violent, apprehensions.[11] The arrests have included young children,[12] the targeting of schools, hospitals and courthouses[13] and the killing of legal observers.[14]

b) The adoption of **Asylum Cooperative Agreements (ACAs)**[15] that authorize removal of asylum seekers to third countries (no prior presence/transit required) that have poor human rights records and/or limited capacity to process asylum claims. The terms of the ACAs are not public and do not appear to follow a formal process.

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[9] Inter-American Commission on Human Rights, "*IACHR and United Nations Experts: States Must Protect the Rights of Persons in Human Mobility*" (18 September 2025), online: <https://www.oas.org/en/iachr/jsForm/?File=/en/iachr/media_center/preleases/2025/190.asp&utm_term=class-dc>.

[10] Julie Young et al., "*The hidden truth about migrant deaths at the Canada-U.S. border*" (6 February 2025), online: <https://theconversation.com/the-hidden-truth-about-migrant-deaths-at-the-canada-u-s-border-247782>.

[11] Raya Quttaineh, "*Torture survivors with pending asylum cases arrested by ICE, St. Paul nonprofit says*" (21 January 2026), online: <https://www.kare11.com/article/news/local/torture-survivors-pending-asylum-cases-arrested-by-ice-st-paul-nonprofit-says/89-66d1d611-981c-44e8-8e03-20ef2f1a0122>.

[12] Nicholas Bogel-Burroughs & Sonia A. Rao, "*Detention of 5-Year-Old by Federal Agents Incenses Minneapolis*" (22 January 2026), online: <https://www.nytimes.com/2026/01/22/us/liam-detention-ice-minneapolis.html?auth=linked-google1tap>.

[13] Liz Landers, Doug Adams & Amalia Huot-Marchand, "'*They are circling our schools,' superintendent says after 5-year-old detained by ICE*" (23 January 2026), online: <https://www.pbs.org/newshour/show/they-are-circling-our-schools-superintendent-says-after-5-year-old-detained-by-ice>.

[14] Ernesto Londoño et al., "*Man Killed by Federal Agents in Minneapolis Was Holding a Phone, Not a Gun*" (24 January 2026), online: <https://www.nytimes.com/live/2026/01/24/us/minneapolis-shooting-ice>.

[15] Catholic Legal Immigration Network, Inc., "*Outsourcing Our Human Rights Obligations: Tracking the Administration's Use of Bilateral Agreements to Externalize Due Process*" (21 January 2026), online: <https://www.cliniclegal.org/resources/removal-proceedings/outsourcing-our-human-rights-obligations-tracking-administrations-use>.

c) **The suspension of asylum claims at the USA-Mexico border**. On 20 January 2025, President Trump issued an Executive Order[16] that effectively ended asylum claims at the USA-Mexico Border. This contravenes the USA's international legal obligations under the UN *Convention Relating to the Status of Refugees* and customary international law prohibiting *non-refoulement.*

d) The **suspension of processing of existing asylum claims** and the re-review of accepted refugee claims.[17]

e) **Deportation to third countries** with possible detention and subsequent deportation to other countries.[18]

f) The **withdrawal of Temporary Protected Status (TPS)** and/or deportation by the United States to countries where Canada has deferred or suspended removals due to egregious human rights conditions.[19]

g) **Pretermission of asylum claims** based on the alleged legal insufficiency of the asylum claim. Pretermission describes the dismissal of an asylum claim with no hearing into the merits. Over 1000 asylum applications have been pretermitted on the erroneous basis that the individual can be removed to an ACA country, thereby terminating the USA's legal obligation to determine the claim.[20]

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[16] The White House, "*Guaranteeing the States Protection Against Invasion*" (20 January 2025), online: <https://www.whitehouse.gov/presidential-actions/2025/01/guaranteeing-the-states-protection-against-invasion/>.

[17] U.S. Citizenship and Immigration Services, "*Policy Memorandum: Hold and Review of all Pending Asylum Applications and all USCIS Benefit Applications Filed by Aliens from High-Risk Countries*" (2 December 2025), online: <https://www.uscis.gov/sites/default/files/document/policy-alerts/PM-602-0192-PendingApplicationsHighRiskCountries-20251202.pdf>.

[18] The deportation of persons subject to 'withholding' under the Convention Against Torture, as well as asylum seekers, nationals of countries whose Temporary Protected Status (TPS) was terminated and other migrants. These countries include Antigua and Barbuda, Cameroon, Costa Rica, Dominica, El Salvador, Eswatini, Ghana, Kosovo, Liberia, Libya, Mexico, Panama, Poland, Rwanda, South Sudan and Uzbekistan. Many of these countries have poor human rights records and subject deported persons to incarceration in circumstances that violate the protected rights in ICCPR. The rendition of hundreds of Venezuelan nationals (including asylum seekers and one Salvadorean) to the CECOT prison in El Salvador is one of the highly publicized removals by the USA to arbitrary detention, torture and cruel, inhuman and degrading treatment. See: Third Country Deportation Watch, "*Banished by Bargain*" (21 January 2026), online: <https://www.thirdcountrydeportationwatch.org/> and Jaya Ramji-Nogales, "*The Trump Administration's Unprecedented Violations of the Non-Refoulement Principle*" (2025) 119:4 AJIL 758 at 758-67.

[19] Suspension of removals to Somalia, Syria, Mali, the Central African Republic, South Sudan, Libya, Yemen, Venezuela, Haiti, Iran, Iraq, Sudan, Democratic Republic of Congo, Afghanistan. See: Canada Border Services Agency, "Enforcing removals from Canada" (October 3, 2025), online: <https://www.cbsa-asfc.gc.ca/security-securite/rem-ren-eng.html>.

[20] National Immigration Project, "*Fighting for a Day in Court: Understanding and Responding to Pretermission of Asylum Applications*" (25 July 2025), online: <https://nipnlg.org/work/resources/fighting-day-court-understanding-

h) **Denial of access to asylum via expedited removal** via streamlined processes that result in mandatory detention and swifter removal.[21] In July 2025, the UN expressed alarm at the deportation of non-citizens to third countries via expedited removal in circumstances that could trigger violations of Articles 3 and 9 of the ICCPR, as well CAT and the Refugee Convention.[22]

Racial Profiling, Arbitrary Arrest and Detention (Articles 9, 10, 14 and 26)

The application of the STCA breaches Canada's obligations to protect against arbitrary detention, fair treatment in detention, conditions of detention, a fair hearing and non-discrimination.

The US government discourse, including by the President and top officials, is openly racist toward racialized immigrants generally, and people of Latino and Somali origin in particular.[23] Racial profiling is flagrant and results in the use of violence to increase deportation statistics. Racial profiling has resulted in apprehensions of US citizens as well as non-citizens. Policies have expanded arbitrary, mandatory detention in dangerous, unsanitary, remote, overcrowded and abusive conditions.[24] In contrast to the factual finding of the Supreme Court of Canada in its 2023 STCA judgement[25], expedited removal, (which has now been expanded dramatically), leads to mandatory detention. As of January 2026, almost 70,000 non-citizens were detained and over 90% of them had no criminal convictions.[26]

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and-responding-pretermission-asylum-applications>; See also: *Matter of C-I-G-M- & L-V-S-G-, Respondents*, 29 I&N Dec 291 at 295 (BIA 2025).

[21] Muzaffar Chishti & Kathleen Bush-Joseph, "*Trump Administration's Expansion of Fast-Track Deportation Powers Is Transforming Immigration Enforcement*" (25 September 2025), online: <https://www.migrationpolicy.org/print/18247>. Originally applied at or near the USA land borders to people who had recently crossed into the USA, President Trump has expanded its application to all USA territory and to anyone without lawful status who entered within two years. The Department of Homeland Security (DHS) has sought dismissal of immigration proceedings to facilitate ICE apprehension of non-citizens and place them in expedited removal. In principle, people in expedited removal who express a 'credible fear' of persecution may still make an asylum claim. However, studies have documented multiple barriers to accessing this procedure. See also: Melissa Katsoris et al., "*Barriers to Protection as of 2024: Updated Recommendations on Asylum Seekers in Expedited Removal*" (11 April 2025), online: <https://hias.org/publications/barriers-protection-today-updated-recommendations-asylum-seekers-expedited-removal/>.

[22] United Nations Human Rights Officer of the High Commissioner, "*UN experts alarmed by resumption of US deportations to third countries, warn authorities to assess risks of torture*" (8 July 2025), online: <https://www.ohchr.org/en/press-releases/2025/07/un-experts-alarmed-resumption-us-deportations-third-countries-warn>.

[23] Jaya Ramji-Nogales, "*The Trump Administration's Unprecedented Violations of the Non-Refoulement Principle*" (2025) 119:4 AJIL 758 at 758-67.

[24] Immigration Legal Resource Center, "*Understanding Mandatory Detention*" (December 2025), online: <https://www.ilrc.org/sites/default/files/2026-01/%20Understanding-Mandatory-Detention.pdf>.

[25] *Canadian Council for Refugees v Canada (Citizenship and Immigration),* 2023 SCC 17.

[26] Austin Kocher, "*92% of ICE Detention Growth in FY 2026 Driven by Immigrants with No Criminal Convictions*" January 8, 2026, online: <https://austinkocher.substack.com/p/92-of-ice-detention-growth-in-fy>; See also: Maanvi Singh, Coral Murphy & Charlotte Simmonds, "*2025 was ICE's deadliest year in two decades. Here are the 32*

Alarmed at the current human rights situation in the USA, the UN High Commissioner for Human Rights, Volker Türk, recently decried the growing dehumanization of migrants. He warned that immigration enforcement practices are undermining due process and basic human dignity. He spotlighted flawed removal decisions, the recurrent use of force that appeared to be unnecessary and disproportionate. He called upon the USA to halt scapegoating tactics that exposed migrants and refugees to xenophobic hostility and abuse.[27] As illustration of the dehumanization Türk refers to, U.S. Immigration and Customs Enforcement (ICE) announced in January 2026 a special enforcement initiative across the state of Maine to apprehend migrants labelling it "Catch of the Day."[28]

Children and the Protection of Families (Articles 7, 23 and 24)

The application of the STCA breaches Canada's obligations to protect against cruel treatment, and to protect the rights of children and the family. The situation of migrant children and families in the USA amounts to breaches of ICCPR.

The detention of children,[29] the imposition of deportation hearings on unrepresented, unaccompanied children[30] and the use of children as bait to apprehend parents by US authorities, are all widely reported.[31] These tactics have resulted in the disruption of the family unit and irreparable harm to children. On this issue, in a recent statement, UN High Commissioner for Human Rights Volker Türk, stated:

> [A]rrests, detentions, and expulsions [from the USA] occur without effort to assess and maintain family unity, exposing children in particular to risks of severe and long-term harm. Repeated instances of detained parents transferred between detention centres, without providing adequate information about their location or access to

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*people who died in custody*" (4 January 2026), online: <https://www.theguardian.com/us-news/ng-interactive/2026/jan/04/ice-2025-deaths-timeline>; and

[27] United Nations News, "*UN rights chief decries US treatment of migrants, as deaths in ICE custody rise*" (23 January 2026), online: <https://news.un.org/en/story/2026/01/1166816>.

[28] Department of Homeland Security, "*ICE Launches "Operation Catch of the Day" Targeting the Worst of Worst Criminal Illegal Aliens Across Maine*" (21 January 2026), online: https://www.dhs.gov/news/2026/01/21/ice-launches-operation-catch-day-targeting-worst-worst-criminal-illegal-aliens

[29] Roque Planas, "*Why the Trump administration is detaining immigrant children – and what happens to them next*" (24 January 2026), online: <https://www.theguardian.com/us-news/2026/jan/23/trump-administration-immigrant-kids-detention>.

[30] Rachel Urange, "*As children are pulled into immigration court, many must fend for themselves*" (31 March 2025), online: <https://www.latimes.com/california/story/2025-03-31/inside-immigration-court>.

[31] Sarah Petz, "*Minnesota officials, Trump administration offer very different takes on ICE's detainment of boy, 5*" (22 January 2026), online: <https://www.cbc.ca/news/world/ice-arrest-minnesota-preschooler-breakdown-9.7057414>.

> legal counsel, also hamper their ability to stay in contact with their families and legal representatives.[32]

The UN Human Rights Committee has cautioned states that heightened consideration must be accorded to children in the context of non-refoulement. The Committee stated:

> ...actions of the State must be taken in accordance with the best interests of the child. In particular, a child should not be returned if such return would result in the violation of their fundamental human rights, including if there is a risk of insufficient provision of food or health services.[33]

Canada's Failure to Review the Designation of the USA as Safe (Articles 2, 6, 7, 9, 10, 17, 23 and 24)

Canadian law obligates the government to continuously review the designation of the USA as a safe country in order to ensure ongoing conformity with the pre-requisites for designation. In the past year, the government has refused to publicly justify its ongoing designation of the USA as a safe country. On 29 October 2025, the Minister of Immigration, Refugees and Citizenship was asked in Parliament to provide a detailed account of the process and outcome of any reviews of the USA's ongoing designation as a safe country. The Minister evaded the question, insisting that the "Government of Canada uses a robust framework to monitor developments in the United States and the impact that changes in policies and practices may have on human rights and refugee protection." Yet, the Minister refused to disclose any monitoring reports or even summaries of reports to external parties because they "are sensitive in nature and may also be part of Cabinet deliberations."[34]

This lack of transparency and accountability has resulted in the exclusion of civil society organizations from the process. Attempts to compel disclosure of evidence of compliance with the government's statutory obligation to continuously review the designation of the USA as safe have been fruitless. The government continues to resist accountability for its ongoing enforcement of the STCA in public and before the courts.

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[32] United Nations Human Rights Council, "*USA migrant crackdown: UN Human Rights Chief decries dehumanisation, harmful policies and practices*" (23 January 2026), online: <https://www.ohchr.org/en/press-releases/2026/01/usa-migrant-crackdown-un-human-rights-chief-decries-dehumanisation-harmful?sub-site=HRC#:~:text=GENEVA%20%2D%20UN%20Human%20Rights%20Chief,treatment%20of%20migrants%20and%20refugees>.

[33] United Nations Human Rights Office of the High Commissioner, "*The principle of non-refoulement under international human rights law*" (1 January 2018), online: <https://www.ohchr.org/sites/default/files/Documents/Issues/Migration/GlobalCompactMigration/ThePrincipleNon-RefoulementUnderInternationalHumanRightsLaw.pdf>.

[34] House of Commons, Written Questions, 45-1, No 287 (29 October 2025) online: <https://www.ourcommons.ca/written-questions/45-1/q-287?expandquestion=true&response=13701060&section=ircc>.

The Illusory Nature of "Safety Valves" (Articles 2, 6, 7, 9, 10, 17, 23 and 24)

As explained in above in "Brief Overview of the STCA and its Litigation History" (above, page 5), the Supreme Court of Canada upheld the STCA designation framework in recent litigation[35], finding that it did not violate the *Canadian Charter of Rights and Freedoms.* The Court suggested that the STCA complied with constitutional requirements because affected individuals who may face a violation of their rights in the USA could seek an exception to the STCA through so-called "safety valves" – discretionary measures available in the IRPA that allow a person to remain in Canada temporarily but do not confer protection.

Since that decision, as part of its advocacy efforts, the CCR has been following several cases of individuals who have sought to avail themselves of these so-called "safety valves" without success, as set out below.

Case 1 (Family case – litigation discontinued):

A family sought entry at the Canada-US land border to make a refugee claim after experiencing detention in the USA. At the Canadian border, they had limited interpretation, minimal time to respond, and barriers to accessing counsel. They were found ineligible and were removed on a summary basis. Requests to pause removal so risk factors could be considered were refused. Efforts to seek discretionary relief did not substantively engage foreseeable harms. The family withdrew from litigation due to fear of exposure and media attention, illustrating the chilling effects and practical barriers to pursuing protection and accountability.

Case 2 (Family-exception case – pending):

A family presented at a Canadian port of entry seeking to rely on an STCA exception: a relative in Canada. Border officials rejected the relationship as insufficiently proven without a meaningful opportunity to obtain corroborating documentation or access effective legal assistance before removal. Removal was rapid and without a timely, individualized assessment of risk factors prior to enforcement. Following return to the USA, the family was detained, which had serious impacts on health and religious practice, alongside coercive pressures (indefinite immigration detention) that undermined the practical ability to pursue protection.

Case 3 (Process/"escalation" case – pending):

This matter concerns the operation of internal, discretionary review pathways, known as an "escalation" protocol, which is relied on to address considerations for removal or not based on severe risks of harm for people found ineligible at the Canada-USA land border. In this case the border agents' approach was to pursue a non-transparent "escalation" that had a strong presumption of removal. The result was removal without meaningful consideration of risk factors. The case highlights systemic barriers that can

[35] *Canadian Council for Refugees v. Canada (Citizenship and Immigration)*, 2023 SCC 17.

prevent timely, effective protection where return predictably exposes individuals to detention and other serious adverse impacts.

Case 4 (Additional illustrative matter – attempted joinder that did not proceed):

In this case, the claimants faced rapid ineligibility findings and removal to the USA before they could effectively present evidence, access counsel, or obtain meaningful, suspensive review of the risks of return. The matter did not proceed, reflecting how often cases collapse due to the speed and consequences of removal, practical barriers to maintaining proceedings while detained and the deterrent effects associated with media exposure.

In addition, several CCR members have undertaken a study to scrutinize the operational reality of "safety valves". Drawing on interviews with 19 immigration lawyers (covering 45 cases), the core finding is blunt: the mechanisms that courts point to as "safety valves" are experienced as highly discretionary, resource-heavy, and often functionally out of reach, especially for those most at risk.[36]

Even where relief is theoretically available, lawyers described a system where a person may need to undertake repeated litigation with no guarantee of success, and where outcomes can depend on "luck". The illusion of access is distilled into six practical barriers:

- First, there are ***structural*** **access blocks:** strict deadlines, statutory time bars, lack of automatic stays of removal, and remedies that may only provide temporary protection.
- Second, these processes are **costly, labour-intensive** and effectively require legal support and funds, making "safety" contingent on representation and capacity.
- Third, **delay** itself becomes a rights problem: lawyers report years-long waits and described applications disappearing into a "black hole."[37]
- Fourth, the "safety valves" are **unpredictable.** The wide discretion and low/uneven grant rates mean that these mechanisms cannot be counted on. Lawyers repeatedly described cases where it wasn't the "safety valve" that prevented harm, but a "randomly reasonable" decision-maker or other contingencies.

[36] Jamie Liew, Jennifer Stone, Pierre-André Thierault, Prasanna Balasundaram, Nadia Nadeem, "*The Practical Unavailability of Safety Valves in Canada's Immigration Legal System: Judicial Shields for Unconstitutional Harms in Immigration Law*" (working title), SSRN posting forthcoming, Copy with the CCR.

[37] Processing times for H&C applications are now posted as more than ten years. See: Government of Canada, "*Check our current processing times*" (14 January 2026), online: <https://www.canada.ca/en/immigration-refugees-citizenship/services/application/check-processing-times.html>.

- Fifth, the barriers are compounded for people with **mental health challenges:** tight timelines, paper-based processes, and lack of procedural supports,[38] which renders meaningful access impossible.

- Sixth, even the ***offering*** **of safety valves can be problematic** at the border/detention: lawyers described situations where a safety valve procedure was "waived" by children or people in crisis, or where officials of the Canada Border Services Agency (CBSA) discouraged people from pursuing it at all.

The authors conclude these mechanisms are "safety valves" largely in name only. They are opaque, "extraordinary relief" measures rather than reliable safeguards consistent with the rule of law. While their availability is formal, practical access is not meaningful.

The STCA's design and the application by Canada of only narrow exceptions means that people have no effective, timely mechanism in Canada to prevent transfer to harm. The STCA has predictable disparate impacts on particular groups,[39] such as women fleeing gender-based violence; Black and racialized claimants; LGBTQ+ claimants; and people with disabilities/mental health needs. These disparate impacts arise because the USA's access to protection and detention outcomes vary sharply by identity and vulnerability.

RECOMMENDATIONS

The Canadian Council for Refugees recommends that the State Party:

1. Immediately withdraw from the Safe Third Country Agreement (STCA) with the USA. We request that the Committee make this a priority recommendation, subject to follow-up.

2. Allow asylum seekers that have been removed to the USA to return to Canada and proceed with refugee claims.

3. Implement transparency in the designation of safe third countries.

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[38] Designated Representatives (DR) are litigation guardians appointed by the Immigration and Refugee Board (IRB). However, their appointment is limited in Pre-removal risk assessments (PRRAs) and non-existent in Humanitarian and Compassionate applications. The role of the DR is to assist the claimant with evidence gathering, obtaining needed access to psychological professionals and rendering of other aid.

[39] Rosa Celorio et al., "*Gendered Consequences of U.S. Mass Deportations: How Shifting Migration Policies Endanger Women and Girls*" (6 May 2025), online (Georgetown Journal of International Affairs): <https://gjia.georgetown.edu/2025/05/06/gendered-consequences-of-u-s-mass-deportations-how-shifting-migration-policiesendanger-women-and-girls/#:~:text=Migration%20is%20an%20inherently%20gendered,reverse%20migrate%E2%80%9D%20to%20dangerous%20environments>.

4. Carry out public consultations with civil society organizations when reviewing the designation of countries as safe third countries.

5. Provide the Human Rights Committee with timely, detailed, evidence-based substantive reasons for continuing to designate the USA as a safe country.

## D. Bill C-12, Strengthening Canada's Immigration System and Borders Act (Articles 2, 6, 7, 9, 13 and 14)

### 1. Refugee Rights under Bill C-12 (Articles 2, 6, 7, 9, 13 and 14)

The Government of Canada introduced Bill C-12, the *Strengthening Canada's Immigration System and Borders Act*, in October 2025, a piece of legislation falsely presented as a means to "improve our immigration system" that "would improve how we receive, process and decide on asylum claims to make the system faster and easier to navigate"[40]. Rather, these measures propose a fundamental weakening of refugee protection, undermining respect for *Charter*-protected rights and Canada's international legal obligations.

CCR's key concerns with Bill C-12 include:

- **Two new ineligibility provisions** that prevent individuals from accessing an oral hearing before the Immigration and Refugee Board of Canada – a globally recognized independent quasi-judicial tribunal. Under Bill C-12, individuals are ineligible if they make a refugee claim more than a year after first arriving in Canada or 14 days or more after entering at the land border between Ports of Entry.

- Individuals who are no longer able to make a refugee claim under these two new ineligibility provisions may instead be offered a Pre-Removal Risk Assessment (PRRA) to ensure that they are not sent back to danger. However, while a PRRA assesses risk on the same grounds as a refugee claim, its **administrative process lacks significant safeguards**, including oral hearings, independent decision-makers, a right of appeal or a statutory stay of removal pending the judicial review of the decision.

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[40] The first reading of Bill C-12 in the Senate was completed on December 11, 2025. See: Government of Canada, "Understanding Strengthening Canada's Immigration System and Borders Act, Bill C-12" (7 November 2025), online: <https://www.canada.ca/en/services/defence/securingborder/strengthen-border-security/understanding-stregthening-canada-immigration-system-borders-act.html>. See also Canadian Council for Refugees, "*Bill C-12: Strengthening Canada's Immigration System and Borders Act, Submission to the Standing Committee on Public Safety and National Security (SECU)*" (November 2025), https://ccrweb.ca/sites/ccrweb.ca/files/2026-01/CCR_C-12%20Brief_SECU.pdf.

- Bill C-12 gives the government **sweeping new powers to cancel, suspend or change a range of immigration documents**, as well as suspend the right to make new applications in a specific category and suspend and terminate processing of applications already submitted if deemed in the "public interest".

This legislation does not improve or create efficiency in the processing of refugee claims in Canada. Rather, these changes violate international law, including ICCPR Articles 2, 6, 7 and 14, by forcing people into the PRRA stream which will lead to discriminatory treatment for certain types of applicants (Article 2); increase risks of refoulement due to lack of procedural safeguards (Article 6 and 7); and violate the right to a fair and public hearing by a competent, independent and impartial tribunal (Article 14).

Ineligibility Provisions

Bill C-12's new ineligibility provisions for refugee claimants will result in denying individuals the right to a hearing and appeal before an independent tribunal.

**One-Year Bar:**

The one-year bar for refugee claims will prevent individuals from making a claim for refugee protection after one year of having arrived in Canada.[41] The provision operates retroactively.

At present, a refugee claimant may be asked by a decision maker to explain why they did not claim refugee status sooner, and the answer is taken into account in determining the credibility of the refugee claim. The proposed bar turns a lag of one year into an irrebuttable presumption that the claim lacks merit, which in turn legitimates a process shorn of an independent decision maker and a full hearing.

A one-year bar on asylum claims currently only exists in the United States of America's refugee determination system and is extensively critiqued.[42] Moreover, the United States' one-year bar runs from a person's *last* date of entry to their country.[43] Bill C-12 imposes a one-year bar that runs from the first time a person ever enters Canada (since June 24, 2020), regardless of age, duration or reason for

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[41] This provision applies to individuals who arrived in Canada on or after June 24, 2020 and retroactively to claims made after June 3, 2025.

[42] See, Human Rights First, "*Draconian Deadline: Asylum Filing Ban Denies Protection, Separates Families*" (September 30, 2021), online: <https://humanrightsfirst.org/library/draconian-deadline-asylum-filing-ban-denies-protection-separates-families/>; National Immigrant Justice Centre et al, "*The One-Year Asylum Deadline and the BIA: No Protection, No Process*" (2010), online: <https://immigrantjustice.org/sites/default/files/content-type/research-item/documents/2021-10/1Year-deadline-report-October-2021-final-for-web.pdf>; Lindsay M. Harris, "*The One-Year Bar to Asylum in the Age of the Immigration Court Backlog*" 22 Geo. Immigr. L.J. 1 (2018), online: <https://digitalcommons.law.udc.edu/cgi/viewcontent.cgi?article=1109&context=fac_journal_articles>; Karen Musalo and Marcelle Rice, "*The Implementation of the One-Year Bar to Asylum*", 31 Hastings Int'l & Comp. L. Rev. 693 (2008), online: <https://repository.uclawsf.edu/faculty_scholarship/568>;

[43] Immigration Equality Asylum Manual, "*5. The One-Year Filing Deadline*", online:<https://immigrationequality.org/asylum/asylum-manual/immigration-basics-the-one-year-filing-deadline/#:~:text=5.-,The%20One%2DYear%20Filing%20Deadline,delay%20in%20filing%20the%20application>.

visit, or how many years have passed since that visit. This even more consequential limit will violate Canada's obligations under international law as the 1951 Refugee Convention places no time limits on the right to make a claim for refugee protection.

Bill C-12 was introduced in October 2025[44], but provides that counting toward the one-year bar commences as of June 2020. This retrospective application of the one-year bar is contrary to the rule of law, which "requires that a citizen, before committing himself to any course of action, should be able to know in advance what are the legal consequences that will flow from it."[45] The provision also operates retroactively in that it will apply to cancel claims filed after tabling of a previous version of the Bill but before it came into force. The retroactivity and retrospectivity of the ineligibility provisions increase the risk of deportation without the opportunity to raise defences in a fair and public hearing before an independent and impartial tribunal, contrary to Articles 13 and 14, and compound the Bill's violation of other articles.

The one-year bar in Bill C-12 fails to account for the phenomenon of the 'sur place' refugee, where conditions change after the person's departure. Additionally, the one-year bar would apply to an adult who seeks refugee protection in Canada if, for example, they visited Canada as an infant with their parents many years earlier. The one-year bar will negatively impact marginalized and vulnerable groups such as LGBTQIA+ individuals and survivors of gender-based violence. LGBTQIA+ individuals may not disclose their identity for many years due to stigma and fear of reprisal. Survivors of gender-based violence may be prevented by the abuser from making a claim in time and then are forced to process their trauma while navigating complex legal processes.[46] These groups may not be able to gather all the information or be ready to make a refugee claim within a year and may not be aware that they can even make a claim based on gender or LGBTQIA+ grounds.[47]

**Restrictions on Arrivals from the U.S. between Ports of Entry:**

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[44] Bill C-12, An Act respecting certain measures relating to the security of Canada's borders and the integrity of the Canadian immigration system and respecting other related security measures, 1st Sess, 45th Parl, 2025, s 75 (as passed by the House of Commons 11 December 2025).

[45] Black-Clawson International Ltd v Papierwerke Waldhof-Aschaffenburg AG, [1975] AC 591 (HL) at 638.

[46] In addition to CCR's own Brief to Parliament, https://ccrweb.ca/sites/ccrweb.ca/files/2026-01/CCR_C-12%20Brief_SECU.pdf; See also Rainbow Railroad, "*Brief Submitted to the Standing Committee on Citizenship and Immigration: Study on improving the order, fairness, and effectiveness of Canada's Immigration System*" (October 2025), online: <https://www.ourcommons.ca/Content/Committee/451/CIMM/Brief/BR13724026/br-external/RainbowRailroad-e.pdf>; and Rainbow Railroad, "*Bill C-2 contravenes Canadian core values and undermines the right to refuge*", online: <https://www.rainbowrailroad.org/the-latest/bill-c-2-contravenes-canadian-core-values-and-undermines-the-right-to-refuge>.

[47] Hilary Evans Cameron, "*Risk Theory and 'Subjective Fear': The Role of Risk Perception, Assessment, and Management in Refugee Status Determinations*" (October 31, 2008), online: <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4912511>; See also: Daisy Vaughan Liñero, "*Memory and trauma in LGBTQ+ women's asylum claims on sexual orientation and gender identity (SOGI) grounds: disregarded, dismissed and denied*" (November 2024), online: <https://sas-space.sas.ac.uk/9974/1/WPS%20No.%2074.pdf>.

Bill C-12 will also render individuals entering Canada from the United States of America between Ports of Entry ineligible to seek refugee protection if they make their claim 14 days or more after arriving. This further constrains the right to asylum since the Safe Third Country Agreement (STCA) already prevents claims within 14 days from people entering from the USA, turning them back unless they meet an exception in the STCA.

The Government of Canada justifies Bill C-12's eligibility changes by arguing that the asylum system is being used as a shortcut to immigration, rather than for protection.[48] However, the government offers no evidence of a systemic issue of fraudulent claims, nor does it explain how removing people from the refugee claim process through these ineligibility measures will prevent fraudulent claims in the future.

The large majority of refugee claims in Canada are successful[49] and instances of fraud in the refugee system are relatively rare. When the Immigration and Refugee Board (IRB) does find a claim is clearly fraudulent, the claim is declared "manifestly unfounded" which occurs only a few dozen times per year.[50] Refugee fraud is rare and should not be misused as justification for Bill C-12's egregious changes to Canadian immigration and refugee law.

Pre-Removal Risk Assessment

In lieu of the refugee claim process, Bill C-12 proposes offering ineligible individuals a Pre-Removal Risk Assessment (PRRA) to assess the risks and dangers they would face if removed from Canada. Currently, the PRRA process is available to all individuals facing removals, unless they are barred from applying due to the STCA or a recent failed refugee claim. Bill C-12 compounds earlier legislative changes to bar access to the refugee claim process. In 2019, legislative changes rendered ineligible claims from anyone who had previously claimed refugee protection in another Five Eyes country[51], even if the claim had

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[48] Government of Canada, "*Understanding Strengthening Canada's Immigration System and Borders Act, Bill C-12*" (7 November 2025), online: <https://www.canada.ca/en/services/defence/securingborder/strengthen-border-security/understanding-stregthening-canada-immigration-system-borders-act.html>.

[49] Immigration and Refugee Board of Canada, "Refugee claim statistics" (23 May 2023), online: <https://www.irb-cisr.gc.ca/en/statistics/protection/pages/index.aspx>; See also: York University, "*Setting the record straight on refugee claims by international students*" (8 May 2024), online: <https://www.yorku.ca/news/2024/05/08/setting-the-record-straight-on-refugee-claims-by-international-students/>.

[50] Immigration and Refugee Board of Canada, "*Assessment of credibility in claims for refugee protection"* (31 December 2020), online: <https://www.irb-cisr.gc.ca/en/legal-policy/legal-concepts/Pages/Credib.aspx#toc4>; See also: York University, "Setting the record straight on refugee claims by international students" (8 May 2024), online: <https://www.yorku.ca/news/2024/05/08/setting-the-record-straight-on-refugee-claims-by-international-students/>.

[51] An intelligence alliance created after the Second World War, the Five Eyes are Canada, Australia, New Zealand, the United Kingdom and the USA. See: Public Safety Canada, "*International Forums*" (23 November 2025), online: <https://www.publicsafety.gc.ca/cnt/ntnl-scrt/fv-cntry-mnstrl-en.aspx?wbdisable=true#:~:text=Bilateral%20Engagement-,Five%20Eyes,all%20levels%2C%20including%20between%20Ministers>.

never been heard. However, the 2019 changes at least require a PRRA officer to hold an interview before making a decision, whereas the procedure introduced in Bill C-12 does not.

This Committee has already found in *Choudhary v Canada*,[52] that the PRRA process is an inadequate replacement for a decision from the Immigration and Refugee Board. The PRRA process does not guarantee applicants an oral hearing. Article 14 of the ICCPR entitles everyone to a "fair and public hearing by a competent, independent and impartial tribunal established by law." Refugee claimants' right to a full oral hearing was also recognized by the Supreme Court of Canada 40 years ago in the *Singh* decision[53], which led to the establishment of the IRB as an independent quasi-judicial tribunal. Bill C-12 violates this right and undermines Canada's world-renowned refugee determination system.

PRRA decision-makers (IRCC officials) are not independent decision-makers with the training and expertise to competently adjudicate the merits of protection claims. PRRA decision-makers are employed by the Government of Canada's immigration department, which is part of the Executive Branch of government and must implement government policy. Conversely, IRB adjudicators are employees of an independent tribunal and receive significant, trauma-informed training on assessing protection claims. At just 6% for cases considered after an IRB hearing and 33% for cases deemed ineligible for referral to the IRB, the PRRA acceptance rate[54] is significantly lower than the average acceptance rate at the IRB over the past five years, which is 63%.[55] This raises concerns about both the competence and independence of PRRA decision-makers.

Furthermore, when a PRRA application is rejected, there is no right of appeal. While the decision can be challenged at the Federal Court, no statutory stay of removal is provided while awaiting the result. There is also a leave requirement at the Federal Court that results in most applications not receiving a hearing at all. A recent study demonstrates that sending claims to the PRRA process is inefficient because these cases are more likely to later face judicial review at the already overloaded Federal Court than cases that are heard or are referred to the IRB.[56]

Additionally, certain nationals will be ineligible for both refugee claims and PRRAs because the PRRA process is only triggered when Canada is ready to remove an individual. People from countries where Canada has a moratorium on deportations, such as Haiti, Afghanistan or Venezuela, cannot be removed

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[52] Choudhary v Canada, Communication No 1898/2009, UNHRC, UN Doc CCPR/C/109/D/1898/2009 (2013)., at paras 5.4, 9.6.

[53] *Singh v Minister of Employment and Immigration*, 1985 SCC 65.

[54] Government of Canada, "*CIMM – Overview of Irregular Migrants and the Pre-removal Risk Assessment*" (18 November 2022), online: <https://www.canada.ca/en/immigration-refugees-citizenship/corporate/transparency/committees/cimm-nov-18-2022/overview-irregular-migrants.html>.

[55] Immigration and Refugee Board of Canada, "*Claims by Country of Alleged Persecution - 2025*" (20 November 2025), online: <https://www.irb-cisr.gc.ca/en/statistics/protection/Pages/RPDStat2025.aspx>.

[56] Wallace, Simon, "*Getting it Right the First Time: Exploring the False Economy of Bill C-12's Refugee Process Shortcuts*" (October 17, 2025), online: <https://ssrn.com/abstract=5620250>

and therefore have no access to PRRA. This will leave thousands of people stuck in a legal limbo with no way to make a claim or gain status in Canada, resulting in long-term family separation and limited rights and inability to contribute to society.

Finally, unlike dependent children abroad of refugee claimants, children of PRRA applicants are not "locked in" at the age the applicant files the PRRA. Bill C-12 will therefore prevent the reunification of many refugee families in Canada simply by diverting the claimant to the PRRA process.

Bill C-12 arbitrarily, and cruelly, reinforces a bifurcated refugee protection system, wherein only some claimants have access to independent, specialized decision makers, oral hearings, appeals, and protection from deportation while awaiting a decision. A two-tiered system based on matters that are not relevant to whether the claim is founded leads to violations of refugees' rights. The introduction of new ineligibility provisions will not only cause more harm for refugees but is also unlikely to achieve the goal of timely processing of refugee claims.

## 2. Sweeping Powers to Cancel, Suspend or Change Immigration Documents and Programs (Articles 2 and 14)

### Mass Cancellation of Immigration Documents

Bill C-12 gives the government, if it is in the "public interest to do so," the ability to cancel or modify documents, including permanent resident visas, permanent resident cards, temporary resident visas, electronic travel authorizations, temporary resident permits, work permits, or study permits. The government could also suspend these documents, impose or modify conditions on them, and impose or vary conditions on temporary residents. The mass and sudden cancellation of immigration documents without any consideration of the individual's circumstances or respect for due process raise serious concerns, especially as they pertain to permanent residents.

### Suspension and Cancellation of Applications

Bill C-12 gives the government the ability to stop accepting applications and to suspend or terminate the processing of existing applications, including permanent resident visas, temporary resident visas, and work or study permits, during a certain period if it is in the "public interest." Under section 72 of Bill C-12, the government could "restrict the application of the order to certain foreign nationals or to applications within a class of applications."

Bill C-12 poses major concerns regarding these new powers for suspension or termination of processing and cancellation of documents. The provisions are very broad, contain no safeguards or definition of "public interest" and, at a time of heightened scapegoating, racism, and xenophobia, could easily lead to discrimination or politically expedient targeting of certain nationalities, or classes of immigration applications (for example, international students).

The notion of "public interest" is vague and lends itself to abuse of power. For example, the systematic underinvestment in processing of refugee and humanitarian applications (as compared to border control) has resulted in enormous backlogs—for refugee claim determination, for resettlement of privately sponsored refugees, for those waiting for humanitarian and compassionate consideration for permanent residence, among others. Such backlogs could provide a pretext for terminating applications in the name of the "public interest" in efficient public administration. The cancellation, suspension or modification of immigration documents without statutory limitations poses the risk of arbitrary or discriminatory application of the law without recourse or review. There are no protections for consideration of individual circumstances or respect for due process rights. The cancellation of permanent resident documents without respect for established due process rights and based on blanket orders driven by political considerations undermines the rule of law. [57]

The sudden cancellation, suspension or modification of immigration documents could also lead to more people living without status or in extremely precarious conditions, putting them at risk of violence and denying access to employment, education and social services. These powers, which do not provide for any consideration of the individual's circumstances, could lead to negative effects on the wellbeing and safety of migrants and refugees, such as the disruption of an individual's life plans, uncertainty about their future, and financial uncertainty for themselves and their families.

The new ministerial powers introduced in Bill C-12 undermine principles of accountability, transparency, and fairness which are foundational to Canada's immigration system and violate Articles 2 and 14 of the ICCPR.

RECOMMENDATIONS:

The Canadian Council for Refugees recommends that the State Party:

6. Withdraw or repeal Bill C-12.

7. Amend the IRPA to provide that none of the ineligibility provisions in the bill apply to prevent applicants from accessing a refugee determination procedure.

8. Conduct a wholesale review of the IRPA to ensure that all sections affecting refugees and migrants comply with Canada's obligations under the Refugee Convention and the ICCPR.

[57] Canadian Bar Association, "*Bill C-12 – Strengthening Canada's Immigration System and Border Act*" (5 November 2025), online: <https://cba.org/Our-Impact/Submissions/Bill-C-12-Strengthening-Canada-s-Immigration-System-and-Borders-Act>.

## E. Refugee Cessation (Articles 6, 7, 9, 12, 17, 23 and 26)

In 2012, the Canadian government imposed new consequences to a finding that a recognized refugee's protection has ceased,[58] meaning cessation under IRPA ss. 108(1)(a)-(d) leads to:

- Automatic loss of permanent resident ("PR") status with no procedural protections;
- Automatic inadmissibility, with no hearing to which all other permanent residents are entitled;
- Real risk of removal from Canada.

While these sections were ostensibly introduced to combat fraud in the immigration system, they represent a profound misunderstanding of the Refugee Convention. Cessation of refugee protection in circumstances where refugee protection is no longer needed is provided for in Article 1C in the Refugee Convention, which is incorporated by IRPA s. 108. However, Article 1C does not imply or address any fraud on behalf of the refugee.

Under s. 108(1)(a) a refugee may be found to have re-availed themselves of the protection of their home country if they do any one of the following:[59]

- travel to their country of origin, including for visits to ill or dying family members, or to fulfill family obligations such as getting married, and even where the persecution comes from a third party and not the state and the person takes precautionary measures while in their country of origin;
- renew the passport of their country of origin;
- use the passport from their country of origin to travel to a third country.

Cessation under s. 108(1)(a) entails a finding that by doing any of the above actions, the person intended to re-avail themselves of the protection of their country of origin and their refugee status is lost. It is impervious to the basic fact that refugees are people who were forced to leave their

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[58] The new consequences are under ss. 40.1 and 46(1)(c.1) IRPA and s. 228(1)(b.1) of the IRPR. The provisions of IRPA section 108 relevant to the CCR concerns are:

108 (1) A claim for refugee protection shall be rejected, and a person is not a Convention refugee or a person in need of protection, in any of the following circumstances:

(a) the person has voluntarily reavailed themself of the protection of their country of nationality;(b) the person has voluntarily reacquired their nationality; […]

(e) the reasons for which the person sought refugee protection have ceased to exist.

(2) On application by the Minister, the Refugee Protection Division may determine that refugee protection referred to in subsection 95(1) has ceased for any of the reasons described in subsection (1).

[59] Canadian Council for Refugees, "*Cessation – Basic Information*" (February 2014), online: <https://ccrweb.ca/en/cessation-basic-information>.

homelands, not who wanted to. Because re-availment has to do with a refugee's subjective intentions, and not objective country conditions, in cases of cessation under s. 108(1)(a), *country conditions may remain objectively dangerous and life-threatening for that person*. If country conditions had changed to no longer be dangerous, cessation would be under s. 108(1)(e), which does not on its own result in loss of permanent residence. However, the legislation provides that, if refugee protection has ceased based on re-availment (s. 108(1)(a)) as well as under 108(1)(e) (change in country conditions), the refugee automatically loses their permanent residence.[60]

Moreover, even though the amendments only came into force in 2012, they apply to all refugees, regardless how long ago they were recognized. Practically, this has resulted in a number of refugees who had been established in Canada for years with family, work and friends, and who never had notice that their permanent resident status could be lost due to cessation, being taken to deportation proceedings years after being recognized as refugees in Canada.

Based on public record affidavits filed by CCR in litigation about the cessation regime,[61] the following examples illustrate how the cessation provisions are applied.

- 30 years after he was recognized as a refugee, a Sri Lankan faced a cessation application. He had lived in Canada for years with his wife and family, including a disabled dependent child and several grandchildren. He had travelled to Sri Lanka to fulfill family and cultural obligations. Although initially brought under s. 108(1)(a), CBSA's application was eventually allowed under s. 108(1)(e).

- An application for cessation was granted against a refugee from the Czech Republic 25 years after he received refugee protection. He has raised his two daughters in Canada. His travels were to facilitate his family's move, to attend funerals, or to care for his loved ones. He faces loss of status, loss of eligibility to work and obtain services, and removal from Canada.

- An application for cessation was granted against a refugee from Iran 18 years after she was recognized in 2005. She travelled to Iran to support family amidst health troubles and to contribute to the dissident movement. She faces loss of status, loss of eligibility to work and obtain services, and removal from Canada.

- An application for cessation was granted against a refugee from Iran 14 years after she was recognized in 2008. She travelled to Iran to assist the search for people who murdered her son, to mourn her ex-husband's death and to care for her sick father. She faces loss of status, separation from Canadian family, inability to visit her son's grave in Canada, loss of eligibility to work and obtain services, and removal from Canada.

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[60] IRPA ss. 40.1 and 46(1)(c.1) and IRPR s. 228(1)(b.1).

[61] *Gnanapragasam v. Canada (Public Safety and Emergency Preparedness),* 2024 FC 761.

- An application for cessation was granted against a refugee from China 12 years after he was recognized in 2008. Despite being found to not appreciate the nature of the cessation proceeding due to cognitive impairment, he was found to have re-availed himself of China's protection and faces loss of status, separation from Canadian family including a son who is a cancer survivor, loss of eligibility to work and obtain services, and removal from Canada.

- An application for cessation was granted against an Ahmadiyya Muslim from Pakistan 7 years after he was recognized in 2015. He travelled to Pakistan to support his ailing grandmother. He faces loss of status, loss of eligibility to work and obtain services such as medical treatment, and removal from Canada.

Since 2012, overbroad interpretations of s. 108(1)(a) combined with ss. 40.1 and 46(1)(c.1) and IRPR s. 228(1)(b.1) have subjected refugees to cruel and unusual treatment, arbitrary interference with privacy, their family and home, as well as creating risk to their life through the real possibility of refoulement contrary to articles 6, 7, 9, 12, 17, 23 and 26 of the Covenant.

Canada's cessation regime violates articles 6 and 7 of the Covenant because it results in a real possibility of refoulement. Cessation proceedings do not consider current risk - just whether there is a breach of the cessation provisions. Cessation under s. 108(1)(a) can occur even though a refugee's country of origin remains objectively dangerous. Through the operation of this section together with ss. 40.1 and 46(1)(c.1) and IRPR s. 228(1)(b.1), Canada seeks to *refoule* people who continue to be in danger of persecution and/or torture. Articles 6 and 7 do not permit derogation to justify these actions.

Moreover, the cessation regime violates articles 6, 9, 12, 17 and 23. Article 34 of the Refugee Convention promotes naturalization as a "durable solution" for refugees. A durable solution ends the problems associated with displacement and allows a person to resume their normal life in a safe environment.[62] UNHCR has commented that cessation should be interpreted in line with the goals of durable solutions.[63] That is consistent with the Covenant's protections for life, personal security and the family in articles 6, 9, 12, 17 and 23. Many refugees become established in Canada and Canada becomes their country within the meaning article 12(4) of the Covenant.[64] Yet, Canada's cessation regime seeks to arbitrarily and disproportionately sever these ties to country and family by subjecting refugees to cessation and removal proceedings, often years after a person was recognized as a refugee and despite

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[62] United Nations High Commissioner for Refugees, "*UNHCR and International Protection: A Protection Induction Programme*" (30 June 2006) at chs 7, 7.1, online: <https://www.unhcr.org/publications/unhcr-and-international-protection-protection-induction-programme>.

[63] United Nations High Commissioner for Refugees, "*Handbook on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol relating to the Status of Refugees*" (1 February 2019) at 99, online: <https://www.unhcr.org/media/handbook-procedures-and-criteria-determining-refugee-status-under-1951-convention-and-1967>.

[64] *Warsame v. Canada*, UNHRC, Communication No 1959/2010, UN Doc CCPR/C/102/D/1959/2010 (2011) at para 8.5; See also: Budlakoti v. Canada, UNHRC, Communication No 2264/2013, UN Doc CCPR/C/122/D/2264/2013 (2018) at paras 9.3-9.4.

consistent residence in Canada. It threatens to separate refugees from their life and family, undermines their ability to work and receive services such as healthcare services. It is not clear how any of these actions combat fraud or achieve any purpose of the IRPA or Refugee Convention.

Not only does it seek to *refoule* refugees to countries where they face risk of harm contrary to articles 6 and 7, Canada's cessation regime on its own violates articles 7 and 9 by creating profound psychological harm for refugees. Refugees flee from traumatic situations. Threatened for years by the prospect of cessation and return to danger and loss of their home, refugees are unable to find stability, maintain their well-being and heal from trauma. The effects are grossly disproportionate to any actions these refugees have taken or any goal the legislation seeks to realize.

Most refugees subject to cessation are law abiding and have worked hard to contribute to Canada. Yet, they have fewer procedural protections than those inadmissible for criminality because their loss of permanent residence is automatic. The Immigration and Refugee Board considers only the cessation allegation. Usually, an allegation of inadmissibility for a permanent resident would go to an admissibility hearing before an independent decision-maker and, for many, there would be a right of appeal.[65] This does not happen for cessation proceedings. This lack of protections for permanent residents, often long-term permanent residents, is further arbitrary and cruel treatment.

For all of the above reasons, the cessation regime is also discriminatory, in violation of Article 26. It revokes the benefit of permanent residence from some refugees in a manner that reinforces negative stereotypes about them on the grounds of their "other status". For example, it perpetuates the myth that refugees are perpetrating fraud or abusing the immigration system. Moreover, it treats different categories of permanent residents differently, because it provides fewer protections against loss of status to those who came in as refugees. It also disproportionately affects nationals of some countries as opposed to others.

The cessation regime has been subject to litigation about its compliance with domestic constitutional law since 2022,[66] but due to limited recognition of Covenant rights through the *Charter*, proceedings at lower courts have so far been dismissed. However, the courts have yet to give effect to Canada's international human rights obligations when considering the cessation regime.

RECOMMENDATION:

The Canadian Council for Refugees recommends that the State Party:

9. Immediately repeal ss. 40.1 and 46(1)(c.1) of IRPA and s. 228(1)(b.1) of the IRPR and restore the status of any permanent resident who lost it pursuant to those provisions.

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[65] Immigration and Refugee Protection Act, SC 2001, c 27, ss. 44(2), 63(3).

[66] *Gnanapragasam v. Canada* (Public Safety and Emergency Preparedness), 2024 FC 761; See also: *Slepcsik v. Canada* (Citizenship and Immigration), 2025 FC 1840.

## F. Immigration Detention

Incompatibility with the ICCPR and overview of the regime (Articles 2, 6, 7, 9, 10, 17, 23, 24 and 26)

Canada's immigration detention regime is incompatible with its obligations under the ICCPR, because it permits arbitrary, indeterminate and discriminatory deprivation of liberty of non-citizens, including refugees and other vulnerable migrants.

Canada asserts that detention is a measure of last resort and that alternatives to detention are systematically considered, yet thousands of migrants are detained annually on purely administrative grounds, primarily on the basis of alleged "flight risk" and identity concerns, without any allegation of criminal conduct.[67]

Indeterminate and Lengthy Detention (Article 9)

From 2018–2019 to 2024–2025 Canada detained between roughly 3,000 and 8,800 non-citizens per year for immigration purposes, with 4,084 people detained in 2024–2025 alone and a national daily average that has remained in the hundreds. While the average period of detention is measured in days, a substantial number of detainees are held for extended periods. Between 2016 and 2021, Canada held more than 300 immigration detainees for longer than one year. More recently, in 2024-2025, Canada held 611 immigration detainees for 40 days or longer. In this same period 193 individuals were held for more than 99 days but the exact time periods are not reported. [68]

Canada remains one of the few OECD states with no statutory maximum time-limit on immigration detention.[69] The absence of a statutory limit on the length of detention means that immigration detention in Canada is, in law and in practice, potentially indefinite, contrary to the requirement under article 9 of the ICCPR that detention be both lawful and non-arbitrary, necessary, proportionate and subject to strict temporal limits.

International bodies have repeatedly warned Canada that federal immigration detention provisions violate the prohibition of arbitrary detention and ill-treatment: the Inter-American Commission on Human Rights in *Suresh v. Canada*[70] found that Canada had breached its international obligations in

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[67] Government of Canada, "*Report to the UN Human Rights Committee*" (30 April 2025) at paras 117–122; See also: Government of Canada, "Annual detention statistics: 2012 to 2025" (14 August 2025), online: <https://www.cbsa-asfc.gc.ca/security-securite/detent/stat-2012-2025-eng.html>; See also: Efrat Arbel & Molly Joeck, "*Incalculable Harm: Analyzing the Impact of the COVID-19 Pandemic on Immigration Detention in Canada*" (2025) 56:1 OLR, online: <https://rdo-olr.org/wp-content/uploads/2025/04/OLR-56-1-05-Incalculable-Harm_Arbel-Joeck_v4.pdf>.

[68] Government of Canada, "*Annual detention statistics: 2012 to 2025*" (14 August 2025), online: <https://www.cbsa-asfc.gc.ca/security-securite/detent/stat-2012-2025-eng.html>

[69] Global Detention Project, "*Canada*" (April 2021), online: <https://www.globaldetentionproject.org/countries/americas/canada>.

[70] Inter-American Commission on Human Rights, "*Report No. 8/16 Case 11.661 Manickavasagam Suresh*" (13 April 2016), online: <https://www.oas.org/en/iachr/decisions/2016/capu11661en.pdf>.

relation to the use of immigration detention in the security context. The UN Working Group on Arbitrary Detention in *Toure v. Canada*[71] expressed concern about indefiniteness, carceral conditions and the use of provincial jails for civil immigration detention. More recently, the Working Group on Arbitrary Detention's Report on its Visit to Canada in 2024 identified significant concerns, including that detention was not applied as an exceptional measure, for the shortest period, and only for a legitimate purpose; alternatives to detention are often only considered after arrest, at the review hearing; the lack of a legal limit on the maximum detention, and that children could be detained, including for family reunification.[72]

Arbitrary Detention and Grounds for Detention (Article 9)

Canada's current approach violates article 9 of the ICCPR because detention is ordered and maintained on broad, vague grounds— "flight risk," "danger to the public" and identity concerns—without a requirement to demonstrate that detention is strictly necessary and that less intrusive means cannot achieve immigration objectives.[73] In the case of detention on the basis of identity or suspicion of inadmissibility, the independent tribunal responsible for review is barred by the legislation from reviewing the legal validity of the decision to detain.[74]

Approximately 80–90 percent of immigration detainees are held on grounds related to risk of non-appearance or identity with the result that people are deprived of liberty solely to secure their presence at administrative proceedings, contrary to the principle that immigration detention must be exceptional and individually justified. [75]

Regular detention reviews by the Immigration Division of the Immigration and Refugee Board, nominally every 48 hours, 7 days and each 30 days thereafter, do not cure arbitrariness where the underlying legal

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[71] UN Working Group on Arbitrary Detention, "*Opinion No. 70/2018 concerning Ebrahim Toure (Canada)*" (7 June 2019), online: <https://docs.un.org/en/A/HRC/WGAD/2019/7>.

[72] United Nations General Assembly, "*Report of the UN Working Group on Arbitrary Detention: Visit to Canada*" (4 August 2025) at 17, online: <https://docs.un.org/en/A/HRC/60/26/ADD.1>.

[73] Immigration and Refugee Protection Act, SC 2001, c 27, ss 55–58.

[74] Canadian Council for Refugees, "*Submission to the UN Working Group on Arbitrary Detention for consideration in "Guiding Principles on the right of anyone deprived of his or her liberty to challenge the legality of the detention in court*" (20 January 2014), online: <https://ccrweb.ca/sites/ccrweb.ca/files/wgad-submission-jan-2014.pdf>.

[75] According to CBSA's own Annual Detention Statistics, for each fiscal year from 2020–2021 to 2024–2025, approximately four-fifths or more of immigration detainees were held on administrative grounds related to 'unlikely to appear' and identity, with only a small minority detained on alleged danger or security grounds. See: Government of Canada, "*Annual detention statistics: 2012 to 2025*" (14 August 2025) at Table 1.4, online: <https://www.cbsa-asfc.gc.ca/security-securite/detent/stat-2012-2025-eng.html>.

framework permits open-ended detention and where review proceedings are highly deferential to prior detention decisions and structurally tilted towards continuation of custody.[76]

The Federal Court of Appeal's decision in *Brown v. Canada,* upholding the constitutionality of the statutory scheme under the Canadian Charter, does not resolve Canada's obligations under articles 7, 9 and 10 of the ICCPR, particularly given the Court's own recognition that conditions and length of detention must be assessed for proportionality and can render detention unlawful.[77]

Conditions of Detention and Carceral Sites (Articles 7, 9 and 10)

Conditions in Immigration Holding Centres are carceral in nature. For refugee claimants, these conditions not only retraumatize but also further jeopardize their claim, given the difficulty of pursuing a claim while imprisoned.

Canada has historically held a significant proportion of immigration detainees in maximum-security provincial jails, where they are subject to prison routines, strip searches, lockdowns, segregation and co-mingling with criminally accused or sentenced prisoners, conditions that multiple inquiries have found to be cruel, inhuman or degrading for civil detainees.[78] The use of provincial jails and now federal "immigrant stations" for immigration detention violates articles 7 and 10 ICCPR and international standards which require that civil detainees not be held in penal facilities or in prison-like conditions.[79]

The recent termination of provincial agreements to hold immigration detainees in provincial jails has not ended carceral immigration detention, since the federal government implemented legislation enabling "immigration stations" within federal correctional facilities. In 2025 CBSA began operating a designated immigrant station for so-called "high-risk" detainees at a federal prison located in Sainte-Anne-des-Plaines.[80]

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[76] Immigration and Refugee Protection Act, SC 2001, c 27, ss 55–58; See also: Immigration and Refugee Board of Canada, "*Detention review hearings*" (21 December 2023), online: <https://www.irb-cisr.gc.ca/en/detention-hearings/Pages/detention-review-hearings.aspx>.

[77] *Brown v. Canada (Citizenship and Immigration)*, 2020 FCA 130.

[78] Hanna Gros & Paloma Van Groll, "*We Have No Rights: Arbitrary Imprisonment of Refugees and Migrants with Mental Health Issues in Canada*," (2015), online: <https://ihrp.law.utoronto.ca/sites/default/files/PUBLICATIONS/IHRP%20We%20Have%20No%20Rights%20Report%20web%20170615.pdf>.

[79] United Nations High Commissioner for Refugees, "*Detention Guidelines: Guidelines on the Applicable Criteria and Standards relating to the Detention of Asylum-Seekers and Alternatives to Detention*" (2012), online: <https://www.unhcr.org/us/media/unhcr-detention-guidelines>.

[80] Budget Implementation Act, 2024, No. 1 SC 2024, c 17, ss 433-441 (amendments on "immigration stations"); See also: Canada Border Services Agency, "*CBSA's designated immigrant station for high-risk detainees now operational in Sainte-Anne-des-Plaines*" (July 30, 2025), online: <https://www.canada.ca/en/border-services-agency/news/2025/07/cbsas-designated-immigrant-station-for-high-risk-detainees-now-operational-in-sainte-anne-des-plaines.html>.

Locating civil immigration detainees within federal prisons entrenches a punitive environment and undermines the distinction between criminal punishment and administrative enforcement, contrary to articles 9 and 10 of the ICCPR, the guidance of the Working Group on Arbitrary Detention and UNHCR Detention Guidelines.[81]

Systemic Racism and Discriminatory Treatment (Articles 2, 7, 9, 17, 23, and 26)

Immigration detention in Canada is also discriminatory within the meaning of articles 2 and 26 of the ICCPR and implicates articles 17 and 23 in relation to privacy and family life, because it disproportionately targets and harms racialized non-citizens, particularly Black migrants, as well as persons with psychosocial disabilities.[82]

Studies have documented that Black men and migrants from African and Caribbean countries are over-represented among those held in provincial jails and among those subjected to long-term detention (beyond 90, 180 and 270 days), indicating the operation of structural racism within CBSA decision-making and detention review processes.[83] Racialized people are more likely to be detained and, when released, to be subject to harsher conditions of release than others.

People with mental health conditions are routinely characterized as "uncooperative" or "high-risk," transferred from Immigration Holding Centres to more restrictive jail environments, and held for longer periods, rather than being identified as requiring protection and reasonable accommodation, contrary to articles 2, 7 and 9 ICCPR and Canada's obligations under the *Convention on the Rights of Persons with Disabilities.*

Consequences of Detention (Articles 6, 7 and 10)

Immigration detention has a profound impact on people's dignity and comes with enormous human costs. Many of those detained suffer acute distress and may continue to be traumatized by the experience years later. People's mental health deteriorates while in detention. The impacts of detention are particularly felt by children and by vulnerable persons, including those who have experienced detention in the context of persecution, and those with mental health issues. Detention affects not only

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[81] UN Working Group on Arbitrary Detention, "*Report on its visit to Canada*," A/HRC/60/26/Add.1, 4 August 2025; See also: United Nations High Commissioner for Refugees, "Detention Guidelines: Guidelines on the Applicable Criteria and Standards relating to the Detention of Asylum-Seekers and Alternatives to Detention" (2012) at Guideline 8, online: <https://www.unhcr.org/us/media/unhcr-detention-guidelines>.

[82] Sharryn J. Aiken & Harini Sivalingam, "*Narratives of Harm and the Case for Detention Abolition*" (29 July 2023), online (Mondi Migranti): <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4801892>; See also: Amnesty International & Human Rights Watch, "*I Didn't Feel Like a Human in There*": Immigration Detention in Canada and its Impact on Mental Health" (17 June 2021), online: <https://www.amnesty.org/en/documents/amr20/4195/2021/en/>.

[83] Efrat Arbel & Molly Joeck, "*Incalculable Harm: Analyzing the Impact of the COVID-19 Pandemic on Immigration Detention in Canada*" (2025) 56:1 OLR at 143, 144, online: <https://rdo-olr.org/wp-content/uploads/2025/04/OLR-56-1-05-Incalculable-Harm_Arbel-Joeck_v4.pdf>.

the people detained, but also family members and others close to the person detained.[84] Medical and social science evidence demonstrates that immigration detention predictably causes or exacerbates serious mental health harms—including depression, anxiety, post-traumatic stress, self-harm and suicidality—and that the indeterminacy of detention is a key driver of psychological deterioration, such that prolonged and indefinite immigration detention can amount to ill-treatment under article 7 of the ICCPR.[85]

These harms are not hypothetical: at least 17 migrants and refugee claimants have died in or ancillary to immigration detention in Canada since 2000, most recently on 25 December 2022 in British Columbia, underscoring the lethal character of the system and Canada's failure to protect life and health in custody as required by articles 6 and 10 of the ICCPR.[86]

The case of Abdurahman Ibrahim Hassan, a Somali refugee with severe mental health conditions who spent approximately three years in Ontario provincial jails under immigration authority and who died in hospital after being restrained, illustrates the interaction of racism, disability discrimination, indefinite detention and punitive jail conditions.

The coroner's inquest into Mr. Hassan's death produced wide-ranging recommendations to prevent similar deaths, including changes to the use of segregation, the provision of mental health care and the handling of medical crises in detention. Yet many of these recommendations remain only partially implemented, signalling ongoing breaches of Canada's positive obligations to protect detainees from foreseeable harm.[87]

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[84] Canadian Council for Refugees, "*Overview of CCR positions on detention*" (28 February 2022), online: <https://ccrweb.ca/en/overview-ccr-positions-detention>.

[85] Janet Cleveland & Cécile Rousseau, "*Psychiatric symptoms associated with brief detention of adult asylum seekers in Canada*" (2013), online: <https://pubmed.ncbi.nlm.nih.gov/23870723/>; See also: Amnesty International & Human Rights Watch, " '*I Didn't Feel Like a Human in There': Immigration Detention in Canada and its Impact on Mental Health*" (17 June 2021), online: <https://www.amnesty.org/en/documents/amr20/4195/2021/en/>.

[86] Amnesty International, "*Canada: Jail deaths underscore lethal nature of immigration detention*" (6 March 2023), online: <https://amnesty.ca/human-rights-news/canada-deaths-immigration-detention/>.

[87] Office of the Chief Coroner, "*2023 coroner's inquests' verdicts and recommendations*" (20 November 2025), online: <https://www.ontario.ca/page/2023-coroners-inquests-verdicts-and-recommendations#:~:text=Cause%20of%20death:%20sudden%20death,assist%20with%20discharge%20planning> ; See also: Nicholas Keung, "Mindset of those present when immigration detainee died is key, inquest hears" (8 February 2023), online: <https://www.thestar.com/news/canada/mindset-of-those-present-when-immigration-detainee-died-is-key-inquest-hears/article_be2207ce-6f27-51e8-b87b-7b2c55e1538b.html>; See also: Canadian Council for Refugees, "*Black Legal Action Centre, Refugee Law Office, and the Canadian Council for Refugees pleased with the jury recommendations from the Abdurahman Hassan inquest*" (10 February 2023, online: <https://ccrweb.ca/en/media/jury-recommendations-abdurahman-hassan-inquest>.

Detaining Children and Separating Families (Articles 9, 3 and 24)

The conditions of detention are not appropriate for children. Research has shown that even short-term detention has a long-lasting negative impact on the health of children. Similarly, separating children from their parents may cause long-term damage. Visiting parents in a prison-like facility can be extremely distressing for children, especially when they must part again at the end of each visit.[88] Yet children continue to be subjected to immigration detention or de facto detention through the "housing" of minors with detained parents, and families are still separated for immigration enforcement purposes.

Although Canada has adopted ministerial and regulatory directives purporting to prioritize the best interests of the child, evidence from monitoring bodies and civil society indicates ongoing detention of children and family separation, including during and after the COVID-19 pandemic[89], in clear tension with the requirement that detention be a last resort and for the shortest appropriate period.

The cumulative effect of detention measures in federal law, reinforced by administrative practices—indefinite detention for administrative purposes; disproportionate targeting of Black migrants and people with psychosocial disabilities; and the detention and separation of children and families—constitutes a systemic pattern of arbitrary and discriminatory detention inconsistent with Canada's obligations under the ICCPR.

Lack of effective remedies and independent oversight (Articles 2(3) and 9(4))

Canada's immigration detention framework lacks effective safeguards and remedies: there is no right of appeal from Immigration Division detention decisions, judicial review *may* be possible but only on the basis of an application for leave (permission)—which may be denied without reasons, and access to *habeas corpus* in provincial superior courts remains uneven and onerous.[90] Despite announcing an intention to ratify the Optional Protocol to the Convention against Torture [OPCAT] in 2016, Canada has failed to do so. Canada lacks a robust national monitoring mechanism with an explicit mandate to visit

[88] Canadian Council for Refugees, "*Immigration detention and children: Rights still ignored, two years later*" (November 2019), online: <https://ccrweb.ca/sites/ccrweb.ca/files/children-detention-nov-2019.pdf>.

[89] Efrat Arbel & Molly Joeck, "*Incalculable Harm: Analyzing the Impact of the COVID-19 Pandemic on Immigration Detention in Canada*" (2025) 56:1 OLR, online: <https://rdo-olr.org/wp-content/uploads/2025/04/OLR-56-1-05-Incalculable-Harm_Arbel-Joeck_v4.pdf>; See also: United Nations General Assembly, "*Report of the UN Working Group on Arbitrary Detention: Visit to Canada*" (4 August 2025) at 17, online: <https://docs.un.org/en/A/HRC/60/26/ADD.1>; See also: Canadian Council for Refugees, "*Alternatives to Detention Program: CCR comments*" (August 2022), online: <https://ccrweb.ca/en/alternatives-detention-program-ccr-comments> at 8-10.

[90] Louis Century & Kent Roach, "*Miscarriages of Justice in Immigration Detention*" (2024) 57:3 UBC L Rev., online: <https://commons.allard.ubc.ca/cgi/viewcontent.cgi?article=1355&context=ubclawreview>.

and report on immigration detention facilities, including any places where migrants are deprived of liberty ancillary to immigration processes.[91]

While the adoption in 2024 of legislation establishing an independent oversight body for the CBSA was a welcome step, as of early 2026, the Commission is still not operational. Its implementation remains an urgent priority, so that a complaint mechanism is available in cases of abuse by CBSA officials, whether in relation to detention or in other areas of immigration enforcement.[92]

In light of the foregoing, the Canadian Council for Refugees respectfully submits that Canada is in continuing breach of its obligations under articles 2, 6, 7, 9, 10, 17, 23, 24 and 26 of the ICCPR with respect to immigration detention, and urges the Committee to call on Canada to undertake fundamental legislative and policy reform.

RECOMMENDATIONS:

The Canadian Council for Refugees recommends that the State Party:

10. Pending abolition of immigration detention, enact a clear, short, non-derogable statutory maximum period for immigration detention, after which detention must end, and individuals must be released to community-based arrangements.

11. Amend the law to end arbitrary detention (unreviewable decisions to detain on identity or suspicion of inadmissibility).

12. Recognize in law and policy that race, disability and intersecting vulnerabilities are factors strongly favouring release, and collect and publish race- and disability-disaggregated immigration detention data to monitor discrimination.

13. End the detention of children under immigration legislation and preserve children's right to family unity by not detaining accompanying parents and guardians (legal or de facto).

14. Repeal the provisions in the 2024 Budget Implementation Act authorizing "immigrant stations" in federal correctional facilities and prohibit use of provincial or federal jails and other criminal justice facilities for immigration detention.

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[91] The CCR has been advocating for Canada to ratify the OPCAT for more than 20 years. See: Canadian Council for Refugees, "*Optional Protocol to the Convention Against Torture - Resolution number 3*" (June 2006), online: <https://ccrweb.ca/en/res/optional-protocol-convention-against-torture#:~:text=June%202006,Human%20rights%20treaties>.

[92] *An Act establishing the Public Complaints and Review Commission and amending certain Acts and statutory instruments*, (received royal assent 31 October 2024) online: <https://laws.justice.gc.ca/eng/acts/P-27.5/FullText.html>. See also CCR's submissions to Parliament on the bill (2023 and 2024), online: <https://ccrweb.ca/en/submission-c20-cbsa-oversight>.

15. Fully implement recommendations from domestic inquests and international bodies, including those from the Hassan inquest and the Working Group on Arbitrary Detention's country visit, with clear timelines and public reporting.

16. Ratify the Optional Protocol to the Convention against Torture and establish a robust national preventive mechanism with an explicit mandate to visit all immigration detention facilities and related places of deprivation of liberty.

17. Adopt the foregoing measures as preparatory stages to the end of the use of immigration detention and its replacement with rights-respecting, community-based mechanisms to support participation in immigration and refugee processes.