



Canada's Third Universal Periodic Review (2018): CCR response to States' recommendations

Introduction

The Canadian Council for Refugees (CCR) is a national non-profit umbrella organization committed to the rights and protection of refugees and other vulnerable migrants in Canada and around the world and to the settlement of refugees and immigrants in Canada. The CCR brings forward the concerns and experiences of its approximately 200 member organizations who work directly with refugees and other newcomers in communities across Canada.

The CCR welcomes the opportunity to respond to States' recommendations in this Third Universal Periodic Review of Canada's international human rights commitments.

The CCR supports the majority of recommendations made by States and urges the Canadian government to give high priority to addressing recommendations relating to better respect for the rights of Indigenous Peoples. Specifically, CCR supports recommendations 249 and 250 that call on Canada to implement all "calls to action" of the Truth and Reconciliation Commission in a timely manner.

The CCR welcomes the opportunity to continue to work together with other civil society organizations and all levels of government to support a concrete, measurable, time-bound action plan for implementation of recommendations made not only by the UPR but also by international human rights bodies.¹

Many of the UPR recommendations would, if implemented, benefit refugees, migrant workers and other newcomers (e.g. recommendations to address poverty and homelessness², to combat racism³ and to end gender inequity⁴). Combatting racism and promoting gender equity are deeply embedded in CCR's work, and we urge all levels of government in Canada to develop and promote programs designed to combat racism and hatred and foster positive interactions between diverse groups, and to conduct proactive gender-based analysis of all of its legislation and policies.

The CCR also notes that human rights abuses in other countries force refugees to flee and others to leave home as migrant workers despite exploitative conditions. A number of recommendations made to Canada speak to the need for better respect for human rights by Canadian businesses abroad.⁵ Implementation of these recommendations would help to address the root causes of forced migration.

¹ See recommendations #33, 35, 36, 37, 228.

² See in particular recommendations relating to poverty and homelessness: #150, 153, 154, 156, 159, 160, 162.

³ See in particular recommendations relating to racism and non-discrimination: #39, 40, 45, 47, 42, 44, 48, 49, 50, 51, 53, 54, 55, 56, 57, 58, 64, 68, 69, 71, 152, 168, 171, 155, 157, 158, 241.

⁴ See in particular recommendations relating to gender equality and to address violence against women and girls: #107, 177, 178, 112, 179, 180, 181, 182, 183, 184, 188, 190, 191, 192, 193, 194, 195, 197, 198, 200.

⁵ See in particular recommendations #88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101.

Canada wrongly ties rights to immigration status

The CCR's overarching concern is that **immigration status** acts as a barrier to accessing key international rights in Canada. Canada too often ties rights and benefits protected under various treaties to immigration status, thus excluding people with non-permanent or no status.

In international human rights instruments, and in the *Canadian Charter of Rights and Freedoms*, fundamental rights are tied to the individual as a human being. Yet this basic principle is not respected in Canada with regard to many rights, including:

- Access to health care
- Access to basic education
- Access to benefits (e.g. social assistance, Canada Child Benefit)

Immigration policies as well as chronic processing delays mean that many people face long periods with only temporary immigration status. As a result, for many years they have limited enjoyment of family unity, mobility, work, education and health rights.

A number of recommendations to Canada made by States are particularly relevant to this concern:

- Recommendation 139 calls for equal access for all Canadian children to government services.
- Recommendation 151 calls for the recognition of the indivisibility of all human rights for all those living in the country.
- Recommendation 161 calls for universal access to healthcare, education, and a high standard of living without discrimination.

The CCR urges that these recommendations be addressed by:

- Providing access to the Canada Child Benefit for all children in Canada, without limiting it to children of citizens, permanent residents or Protected Persons (as is currently the case).
- Ending the practice of issuing short-term work permits (of 6 months' duration) to certain groups of non-citizens. This affects many people who are going through Canadian refugee or immigration processes and who are clearly going to be in Canada for a long time before the final determination of their case. The short validity of the work permit affects other entitlements (for example, some provinces will only provide health care coverage if people have work permits of at least one year). Having to apply frequently for work permits is also expensive (the cost is either \$155 or \$255 each time: some classes of applicants are fee-exempt), is administratively burdensome, and makes it harder to find work. Employers are reticent to take someone on and train them if their legal right to work will expire in a few months.
- Eliminating the "Designated Countries of Origin" provisions in the refugee claim process. Refugee claimants from Designated Countries of Origin may not even apply for a work permit until 180 days after a claim for refugee protection has been filed. Designated countries include countries with fairly high refugee recognition rates, such as Hungary and Mexico.

- Devoting sufficient operational resources to the processing of immigration files related to the children of refugees and caregivers who wait much, much longer than other groups to be reunited with their parents in Canada.

a. Migrant workers

Temporary Foreign Workers, including migrant caregivers, spend years working in Canada with only temporary status, and as a result are vulnerable to exploitation and do not enjoy all their rights.

A number of recommendations refer to ensuring the rights of migrant workers are protected:

- Recommendations 3, 4, 5, 6 and 16 – ratify the International Convention on the Rights of All Migrant Workers and Members of their Families;
- Recommendation 25 – ratify ILO Convention No. 189 on Domestic Workers;
- Recommendation 135 – fairer working conditions for all, including migrant workers; and
- Recommendations 135, 137, 261, 262, 264, and 265 – improving conditions of migrant workers, including access to health and employment benefits.

The CCR urges that these recommendations be addressed by:

- Signing the International Convention on the Rights of All Migrant Workers and Members of their Families.
- Immediately ending the closed work permit for Temporary Foreign Workers so that migrant workers have labour mobility. Work permits should be open, or sector- or region-specific.
- Improving access for migrant workers to Provincial Nominee Programs (the federal government and provincial governments have responsibilities in this regard). The CCR recommends minimizing dependence on employers through the introduction of family and community sponsorship streams, reducing application fees, and eliminating barriers for migrant workers hired for seasonal jobs
- Revising Canada’s economic immigration program to reflect the broad needs of the Canadian labour market by including access to permanent immigration status to workers of all skill levels.
- Providing access to federally-funded settlement services to Temporary Foreign Workers.
- Provincial governments opening access to services, including health care, to migrant workers.

For more information, see CCR’s 2018 **Migrant Worker Report Cards**.⁶

⁶ Available at ccrweb.ca/en/migrant-workers/report-cards

b. Refugee claimants

Refugees face long delays in the refugee claim process before receiving a decision, and then further delays before receiving permanent residence. “Legacy claimants” (who applied before 15 December 2012) suffer particularly long delays.

Recommendations 269 and 270 address delays in the refugee claim process; Recommendation 271 addresses the conditions of refugees and refugee claimants.

The CCR urges that these recommendations be addressed by:

- Increasing funding for the refugee claim process in a timely way in proportion to increased numbers, in order to avoid backlogs developing.
- Increasing immigration levels numbers for accepted refugees and their dependants, and ensuring adequate processing resources are available, so that refugees do not face long delays before receiving permanent residence and being reunited with family members.
- Allowing legacy claimants whose claim has been rejected to apply for permanent residence on humanitarian and compassionate grounds, in recognition of the fact that they have established themselves in Canada during the very long wait for a hearing, through no fault of their own.

Canada's immigration policies do not respect non-citizens' rights

A number of Canada's immigration policies and practices are incompatible with international human rights obligations.

Recommendation 268 calls for access to asylum proceedings for all refugee claimants who attempt to enter the country.

The CCR urges that this recommendation be addressed by:

- Withdrawing from the Safe Third Country Agreement with the United States of America;
- Eliminating eligibility provisions in the refugee determination process, notably with respect to second claims, and criminal or security inadmissibility, given that they do not conform to the Refugee Convention and the Convention against Torture.⁷

Recommendations 266, 267, 273 and 274 call for limiting or ending immigration detention, particularly of children.

The CCR urges that these recommendations be addressed by:

- Amending the Immigration and Refugee Protection Act to prohibit the detention of minors.

⁷ The Refugee Convention contains exclusion clauses which exclude from protection individuals who are not deserving because of acts of criminality. Canada's eligibility provisions with respect to security and criminality are broader than these exclusion clauses. The Convention Against Torture allows no exceptions to its prohibition on returns to face torture.

- Eliminating the Designated Foreign National provisions, with their mandatory detention provisions that are contrary to the Canadian Charter of Rights and Freedoms.
- Amending the law with respect to detention on the basis of identity so that it is no longer arbitrary (for example, by giving the Immigration Division the authority to overrule the Minister's opinion on identity).⁸

A large number of recommendations address issues of violence against women and children in ways that are relevant to immigration processes.⁹

The CCR urges that these recommendations be addressed by:

- Amending the Immigration and Refugee Protection Act to provide clear protection and a path to permanent status for trafficked non-citizen persons;
- Having the Canada Border Services Agency adopt a policy on immigration enforcement in the context of violence against women;
- Having Immigration, Refugees and Citizenship Canada adopt a policy facilitating family reunification for a child with their mother without the consent of the abusive father.

Repealing the Excluded Family Member rule (Immigration and Refugee Protection Regulations, s. 117(9)(d)) which permanently bars family reunification for non-disclosed children, disproportionately impacting refugees, caregivers, and persons granted permanent residence on humanitarian grounds.

⁸ Under the Immigration and Refugee Protection Act, if an immigration officer detains a person because the officer is not satisfied of the person's identity, the Immigration and Refugee Board in reviewing the detention may not review whether the person's identity is in fact established. The UN Working Group on Arbitrary Detention found this provision improper, noting that the legislation "thus fails to offer judicial oversight of the decision to detain based on identity." E/CN.4/2006/7/Add.2, 5 December 2005

⁹ Recommendations #112, 179, 180, 181, 182, 183, 184, 185, 187, 188, 189, 190, 191, 192, 193, 194, 195, 196, 197, 198, 199, 200, 201.

