

## **Summary of Lawyers Without Borders Canada's Contribution to the Universal Periodic Review of Canada (November 2023)**

As part of the 4th Universal Periodic Review of Canada before the United Nations Human Rights Council in November 2023, [Lawyers Without Borders Canada](#) (LWBC) submitted a report addressing two (2) human rights issues.

### **Issue 1: Protection of human rights through the fight against impunity for international crimes**

Impunity, especially of international crimes (genocide, crimes against humanity, and war crimes) considered the most serious by the entire international community, is one of the major obstacles to the realization of human rights.<sup>1</sup> Through its support for the International Criminal Court,<sup>2</sup> Canada is regarded as an active participant in the world system to combat impunity for international crimes; but the scarcity of repression of these crimes by its national criminal courts undermines the credibility of the country's commitment against impunity.

Since 2000, Canada has passed a *Crimes Against Humanity and War Crimes Act*, which gives universal jurisdiction to its criminal courts to prosecute any individual found in Canada who has committed international crimes, regardless of their nationality or where these crimes were committed.<sup>3</sup> [The War Crimes Program](#) (Program) was also created as part of Canada's commitment to combat impunity for international crimes.

More than 20 years later, Canada has only conducted two criminal prosecutions based on this act (initiated in [2005](#) and [2009](#) respectively). Operating in a non-transparent way,<sup>4</sup> the (underfunded<sup>5</sup>) Program favors the expulsion from Canada of those accused of international crimes, without obtaining prior guarantees for criminal proceedings in the country of destination.<sup>6</sup>

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<sup>1</sup> See General Assembly, *Report of the Special Rapporteur on the situation of human rights defenders*, 73d Sess, UN Doc A/73/215 (2018), para 20, online:

<<https://documents-dds-ny.un.org/doc/UNDOC/GEN/N18/234/82/PDF/N1823482.pdf?OpenElement>>.

<sup>2</sup> See Government of Canada and the International Criminal Court", February 1, 2023, online :

<[https://www.international.gc.ca/world-monde/international\\_relations-relations\\_internationales/icc-cpi/index.aspx?lang=eng](https://www.international.gc.ca/world-monde/international_relations-relations_internationales/icc-cpi/index.aspx?lang=eng)> ; "Canada provides funding to International Criminal Court to strengthen accountability for conflict-related sexual violence", May 26, 2022, online: <<https://www.canada.ca/en/global-affairs/news/2022/05/canada-provides-funding-to-international-criminal-court-to-strengthen-accountability-for-conflict-related-sexual-violence.html>> ; ICC, "Statement of ICC Prosecutor, Karim A.A Khan QC, on Situation in Ukraine: Receipt of Referrals from 39 States Parties and the Opening of an Investigation", March 2, 2022, online : <<https://www.icc-cpi.int/news/statement-icc-prosecutor-karim-aa-khan-qc-situation-ukraine-receipt-referrals-39-states>>.

<sup>3</sup> Canada, *Crimes Against Humanity and War Crimes Act*, S.C. 2000, c. 24 (Effective October 23, 2000), online: <<https://laws-lois.justice.gc.ca/eng/acts/c-45.9/>>.

<sup>4</sup> See Fannie Lafontaine, « Criminels de guerre au Canada ? La valse-hésitation historique entre poursuites et expulsions », in Oonagh E. Fitzgerald, Valerie Hugues & Mark Jewett, ed, *Reflections on Canada's Past, Present and Future in International Law / Réflexions sur le passé, le présent et l'avenir du Canada en matière de droit international*, Montréal/Kingston : McGill /Queen's University Press, 2018, p. 322.

<sup>5</sup> Its budget has seen virtually no increase since its inception. See Department of Justice Canada, "Crimes Against Humanity and War Crimes Program evaluation", Final Report, August 2016, p. 56, online : <<https://www.justice.gc.ca/eng/rp-pr/cp-pm/eval/rep-rap/2016/cahwc-cchcg/cahwc-cchcg.pdf>>; Lawyers Without Borders Canada (LWBC) and Canadian Partnership for International Justice, "Alleged Massacre Perpetrator Lives Freely in Canada : Canadian Government Called to Act", June 16, 2021, online: <<https://cpij-pcii.ca/orantes/>>.

<sup>6</sup> See Department of Justice Canada, "Evaluation of the Crimes Against Humanity and War Crimes Program," Final Report, August 2016, p. 57-58, online: <[www.justice.gc.ca/eng/rp-pr/cp-pm/eval/rap-rep/2016/cchcg-cahwc/cchcg-cahwc.pdf](https://www.justice.gc.ca/eng/rp-pr/cp-pm/eval/rap-rep/2016/cchcg-cahwc/cchcg-cahwc.pdf)>; Fannie Lafontaine, "Criminels de guerre au Canada ? La valse-hésitation historique entre poursuites et expulsions", in Oonagh E. Fitzgerald, Valerie Hugues & Mark Jewett, ed, *Reflections on Canada's Past, Present*

Canada's failure to comply with its duty to punish international crimes<sup>7</sup> destroys the legitimate aspirations of victims of international crimes to see their rights to truth, justice and reparation satisfied. This situation is perfectly illustrated by the Sosa Orantes case. In this case, Canada, rather than prosecute Mr. Sosa Orantes, one of the alleged perpetrators of the Las Dos Erres massacre in Guatemala in 1982,<sup>8</sup> has been using its Immigration and *Refugee Protection Act*<sup>9</sup> since 2017 to attempt to revoke his citizenship and remove him from the country.<sup>10</sup> This choice prevents victims, including Mr. Osorio Cristales, supported by LWBC, from obtaining justice.<sup>11</sup>

**Recommendations** — We recommend that Canada to:

- **Respect its international human rights commitments by strengthening its practice of prosecuting persons on its territory suspected of having committed international crimes;**
- **Provide the Crimes Against Humanity and War Crimes Program with an adequate and appropriate budget, allowing criminal investigations and prosecutions;**
- **Ensure transparency in the exercise of the discretionary power of its prosecuting authorities, by informing victims and the public of the reasons underlying the decision to lay (or not) criminal charges on the basis of its universal jurisdiction;**
- **Strengthen the capacity of actors involved in the fight against impunity for international crimes in Canada;**
- **Ensure victims of international crimes their rights to have their case heard in court, to truth, justice and reparation.**

## **Issue 2: Protection of human rights through ratification of the American Convention on Human Rights**

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*and Future in International Law / Réflexions sur le passé, le présent et l'avenir du Canada en matière de droit international*, Montréal/Kingston : McGill /Queen's University Press, 2018, p. 316.

<sup>7</sup> In particular as a State party to the Rome Statute of the International Criminal Court. See *Rome Statute of the International Criminal Court*, July 17, 1998 UNTC. 3, Preamble, para 6 and s 1; *The Prosecutor v. Germain Katanga et Mathieu Ngudjolo*, ICC-01/04-01/07 OA 8, *Judgment on the Appeal of Mr. Germain Katanga against the Oral Decision of Trial Chamber II of 12 June 2009 on the Admissibility of the Case* (ICC, Appeals Chamber), September 25, 2009, para 85, online : <[https://www.icc-cpi.int/sites/default/files/CourtRecords/CR2009\\_06998.PDF](https://www.icc-cpi.int/sites/default/files/CourtRecords/CR2009_06998.PDF)>.

<sup>8</sup> This event resulted in the death of 251 civilians. See Inter-American Court of Human Rights, *Case of the "Las Dos Erres" Massacre v. Guatemala*, Judgment of November 24, 2009, para 2, online : <[https://www.corteidh.or.cr/docs/casos/articulos/seriec\\_211\\_ing.pdf](https://www.corteidh.or.cr/docs/casos/articulos/seriec_211_ing.pdf)>.

<sup>9</sup> Canada, *Immigration and Refugee Protection Act*, S.C. 2001, c. 27; online : <<https://laws-lois.justice.gc.ca/PDF/I-2.5.pdf>>.

<sup>10</sup> See CTV News, "Canada tries to strip citizenship from man accused of butchering Guatemalan villagers", April 16, 2017, online : <<https://www.ctvnews.ca/canada/canada-tries-to-strip-citizenship-from-man-accused-of-butchering-guatemalan-villagers-1.3370593>>; Toronto Star, "Groups ask government to prosecute alleged Guatemalan war criminal living in Canada", June 16, 2021, online : <<https://www.thestar.com/politics/2021/06/16/groups-ask-government-to-prosecute-alleged-guatemalan-war-criminal-living-in-canada.html>>.

<sup>11</sup> See LWBC, "Victim of a massacre, his call for help is ignored by the Canadian government", May 30, 2022, online : <<https://asfcanda.ca/en/medias/his-call-for-help-is-ignored-by-the-canada/>>; Radio-Canada, "Le survivant d'un massacre au Guatemala cherche à obtenir justice au Canada", June 15, 2022, online : <<https://ici.radio-canada.ca/rci/fr/nouvelle/1890639/reportage-survivant-victime-massacre-guatemala-justice-canada-crime-guerre>>.

Ratification of international human rights conventions expresses a state's commitment to promote, respect and protect the rights guaranteed by these conventions to persons under their jurisdiction.<sup>12</sup> For most States, the ratification of universal human rights conventions is complemented by the ratification of regional conventions of similar nature, thus helping to strengthen the coherence and stability of the human rights protection mechanism in those countries.

While it's a member of the Organization of American States (OAS), Canada has yet to sign or ratify the *American Convention on Human Rights (ACHR)*,<sup>13</sup> despite a recommendation to this effect by the Standing Senate Committee on Human Rights, which dates back 20 years.<sup>14</sup> Ratification of this Convention would grant the protection of certain rights not covered (or only to a limited extent) by legal instruments to which Canada is already a party.<sup>15</sup> Furthermore, it would make applicable in Canada the standards developed by the inter-American human rights protection system, whose interpretation would be adapted to Canadian specificities, notably regarding violence against women and rights of indigenous peoples.<sup>16</sup> In addition, such ratification would pave the way for the ratification of other conventions from the inter-American human rights protection system. In particular, the *Additional Protocol to the American Convention on Human Rights in the area of Economic, Social, and Cultural Rights*, which provides additional protections and allows victims to present petitions concerning alleged violations of these rights by a State party, but whose accession is subject to prior ratification of the ACHR.<sup>17</sup>

In addition, ratification of the *ACHR* and the acceptance of the mandatory jurisdiction of the Inter-American Court of Human Rights would provide a first choice judicial remedy to persons under Canada's jurisdiction, particularly in view of the impact of the Court's decisions on the protection of human rights in Latin American countries,<sup>18</sup> by enabling them to benefit from its binding decisions to ensure the respect and protection of their human rights.<sup>19</sup> More generally,

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<sup>12</sup> See Human Rights Committee, General Comment No. 31 : The Nature of the General Legal Obligation Imposed on States Parties to the Covenant , CCPR/C/21/Rev.1/Add.13, 26 may 2004.

<sup>13</sup> *American Convention on Human Rights*, 22 November 1969, 1144 UNTC 123 [ACHR]

<sup>14</sup> Senate of Canada, *Enhancing Canada's role in the OAS: Canadian adherence to the American Convention on Human Rights*, Report of the Standing Senate Committee on Human Rights, may 2003, p. 59-60, online: <[https://publications.gc.ca/collections/collection\\_2011/sen/yc32-0/YC32-0-372-4-eng.pdf](https://publications.gc.ca/collections/collection_2011/sen/yc32-0/YC32-0-372-4-eng.pdf) > [Senate Report 2003].

<sup>15</sup> In particular, the right of reply and the right to property. See *ACHR*, *supra* note 13, art 14 and 21; *ibid*, p.58

<sup>16</sup> See Inter-American Commission on Human Rights, *Access to Justice for Women Victims of Violence in the Americas*, OEA/Ser.L/V/II. Doc.68 (2007); *Access to Justice for Women Victims of Sexual Violence: Education and Health*, OEA/Ser.L/V/II. Doc.63 (2011); *Indigenous Women and Their Human Rights in the Americas*, OEA/Ser.L/V/II. Doc.44/17 (2017); *Indigenous and Tribal Peoples' Rights over their Ancestral Lands and Natural Resources: Norms and Jurisprudence of the Inter-American Human Rights System*, OEA/Ser.L/V/II/Doc. 56/09 (2010).

<sup>17</sup> See OAS, *Additional Protocol to the American Convention on Human Rights in the area of economic, social and cultural rights*, 17 November 1988, series no.69, online : <<http://www.oas.org/en/sare/social-inclusion/protocol-ssv/docs/protocol-san-salvador-en.pdf>>, Senate Report 2003, *supra* note 14, p. 57-58; Bernard Duhaime, « L'OEA et le Protocole de San Salvador », in Lucie Lamarche and Pierre Bosset, dir., *Donner droit de cité aux droits économiques, sociaux et culturels – La Charte des droits et libertés du Québec en chantier*, Yvon Blais, Cowansville, 2011, p. 363-405.

<sup>18</sup> See notably Diego García-Sayán, « The inter-American Court and Constitutionalism in Latin America » (2011) 89:7 *Texas Law Review* 1835-1862; Armin von Bogdandy et René Urueña, « International Transformative Constitutionalism in Latin America » (2020) 114:3 *American Journal Of international Law* 403-442.

<sup>19</sup> See especially Mariana Balcorta and Pierre Gilles Bélanger, "Le droit de la Cour interaméricaine des droits de l'Homme : une obligation moderne pour le Canada", (2019) 49 *Revue générale de droit* 85-129, online : <[www.erudit.org/fr/revues/rgd/2019-v49-rgd04229/1055486ar.pdf](http://www.erudit.org/fr/revues/rgd/2019-v49-rgd04229/1055486ar.pdf)>. ; Bernard Duhaime, "10 raisons pour lesquelles le Canada devrait adhérer à la Convention américaine relative aux droits de l'Homme" (2018) 31: 1 *RQDI* p. 267-283, online: <[www.erudit.org/fr/revues/rqdi/2018-v31-n1-rqdi04909/1065036ar.pdf](http://www.erudit.org/fr/revues/rqdi/2018-v31-n1-rqdi04909/1065036ar.pdf)>

this would contribute to the strengthening of human rights in the Americas;<sup>20</sup> one of the major objectives announced by Canada.<sup>21</sup>

**Recommendations** — We recommend Canada to:

- **Ratify the American Convention on Human Rights;**
- **Recognize the mandatory jurisdiction of the Inter-American Court of Human Rights;**
- **Adapt its national law in the light of the normative and jurisprudential developments enshrined in the inter-American system;**
- **Assume a greater role in the promotion and protection of human rights within the inter-American system.**

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<sup>20</sup> See *Ibid*, p. 280-281; Senate Report 2003, *supra* note 14, p.57-59.

<sup>21</sup> Government of Canada, Canada and the Organization of American States, February 1, 2023, online: [www.international.gc.ca/world-monde/international\\_relations-relations\\_internationales/oas-oea/index.aspx?lang=fra](http://www.international.gc.ca/world-monde/international_relations-relations_internationales/oas-oea/index.aspx?lang=fra).