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**ASYLUM ABUSE AND PROTECTION: CRIMINAL AND
HUMAN RIGHTS DIMENSIONS IN IMMIGRATION LAW. A
COMPARATIVE ANALYSIS OF CANADA, THE UNITED
STATES, AND INTERNATIONAL LEGAL OBLIGATIONS-2026**

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Abstract

Asylum law occupies a central position within modern immigration systems. It is both one of the most legally protected pathways into a state, established in binding international responsibilities, and one of the most controversial. Public debate often presents asylum as either a system widely abused by non-genuine claimants or as a humanitarian safeguard deliberately weakened by governments seeking to limit migration. This article argues that both views capture part of the reality but fail when treated as mutually exclusive. However, by adopting a comparative legal analysis of Canada and the United States, and drawing on international refugee and human rights law, this paper examines the legal foundations of asylum protection, the scope of non-refoulement, and the mechanisms available to states to address fraud and criminality without violating international regulations. It analyses refugee status determination, exclusion clauses under Article 1F of the 1951 Refugee Convention, and exceptions to non-refoulement under Article 33(2). The paper further evaluates empirical evidence on asylum fraud and system pressures, including rising claim volumes, institutional backlogs, and procedural reforms. It concludes that framing asylum as a choice between integrity and protection is legally flawed. Furthermore, effective asylum systems must be both strict and fair; and capable of identifying abuse while ensuring meaningful protection for those who meet the legal definition of a refugee.

Keywords: Asylum law; refugee protection; non-refoulement; Article 1F; immigration fraud; Canada; United States; human rights law; refugee status determination.

1. Introduction

Asylum systems (a system under pressure) in Canada and the United States are under heavy and ongoing pressure. A lot of persons are applying for asylum, cases are taking longer to decide, and governments are constantly changing policies to cope. Because of this, public debates have grown louder, especially around claims of “asylum abuse,” system fairness, and whether the law can still meet its national and international responsibilities. Understanding these pressures helps explain why asylum law has become so controversial and so important.

In **Canada**, asylum applications reached high levels in recent years. Government data shows that more than **171,000 people applied for asylum inside Canada in 2024**, which was higher than in previous years (Government of Canada, 2024–25). Although some processing reforms helped speed up early eligibility checks, the overall number of claims remained high. This continued to put pressure on decision-making bodies. There was also a shift in how people applied: more claims were made from inside Canada rather than at the border, especially after border crossings peaked in 2024. This change created new policy and operational challenges for the system.

In response, Canada introduced several policy changes to manage these pressures. By 2025, the government reported that asylum claims had dropped by **about 33 percent compared to 2024** (Government of Canada, 2025). This suggests that tighter controls and system integrity measures may be affecting how and when people apply. However, the general strain has not disappeared. These national trends also show a wider global situation. Worldwide displacement has grown rapidly, with the number of forcibly displaced people increasing from around **4.2 million in 2019 to about 8.4 million by 2024**, which continues to influence asylum systems in countries like Canada (Government of Canada, 2025).

On the other hand, the **United States** faces similar but even larger challenges. Immigration court data shows a massive backlog of cases. By early 2025, there were **almost 3.8 million cases waiting in U.S. immigration courts**, and about **2.4 million of these involved asylum claims** (TRAC; The Connecticut Mirror, 2025). Many applicants wait more than four years for a hearing. These long delays are mainly caused by a lack of judges and staff, frequent policy changes, and uneven reforms across different administrations.

These backlogs have also shaped public and political discussions in the United States. In 2025, asylum denial rates increased sharply, reaching around **76 percent in March 2025**, as authorities focused on clearing backlogs and tightening decisions (VisaVerge, 2025). Some policymakers see higher denial rates as proof that abuse is being reduced. However, human rights groups worry that speed and restriction may come at the cost of fairness, due process, and access to protection.

These trends show that asylum decisions are not shaped only by individual cases. They are deeply affected by government capacity, policy choices, and global events that force people to flee their homes. In both Canada and the United States, high application numbers and long waiting times have increased public scrutiny and political tension. While claims of abuse are common, the evidence suggests that many problems come from limited resources and complex administration, not simply from dishonest applicants.

Furthermore, to truly understand today's asylum debate, it is important to move beyond simple arguments about "abuse versus protection." Modern asylum systems operate in complex legal, administrative, and humanitarian environments. Careful use of data and law is needed to separate real system stress from exaggerated claims and to design reforms that protect borders while still upholding international obligations to people fleeing danger.

2. International Legal Framework

The international asylum system is based on a set of global laws created to protect people who are forced to flee their countries because they are in danger. The most important of these laws are the **1951 Refugee Convention** and its **1967 Protocol**. Together, they explain who qualifies as a refugee, what rights refugees should have, and what responsibilities governments have toward them. These agreements were created after World War II, when millions of people were displaced, and they still form the foundation of asylum systems around the world today (UNHCR, n.d.-a).

2.1 Who Is a Refugee and What Protection Means

Under the Refugee Convention, a refugee is someone who has a real and well-founded fear of being persecuted because of their race, religion, nationality, political opinion, or membership in a particular social group. This person must also be unable or unwilling to rely on protection from their own country.

An important point is that a person becomes a refugee as soon as they meet these conditions. They do not become a refugee only after a government officially recognizes them. The legal status already exists; the asylum process simply confirms it (Goodwin-Gill and McAdam, 2007).

The 1967 Protocol expanded the Convention by removing limits that originally applied only to Europe and to events before 1951. As a result, refugee protection now applies worldwide. The Convention and Protocol also set basic standards for how refugees should be treated, including access to education, work, courts, and basic social services. Governments are also required to work with the UN Refugee Agency (UNHCR) to properly apply these rules (UNHCR, n.d.-a).

2.2 The Rule Against Forced Return

The most important rule in international refugee law is **non-refoulement**. This principle says that a country must not send a person back to a place where their life or freedom would be at risk. This rule applies not only to people who have already been officially recognized as refugees, but also to asylum seekers whose cases are still being decided. Sending someone back before their claim is fully reviewed could put them in serious danger (UNHCR, 2025).

Non-refoulement is so important that it is considered a rule of customary international law, meaning it applies to all countries, even those that have not signed the Refugee Convention. It is also strongly supported by human rights treaties, such as the **Convention Against Torture** and the **International Covenant on Civil and Political Rights**. These treaties strictly forbid returning anyone to a place where they may face torture or inhuman treatment. Under human rights law, this protection has no exceptions, even for reasons like national security (Goodwin-Gill and McAdam, 2007).

2.3 Limits and Exclusions from Refugee Protection

Although refugee law offers strong protection, it does allow for limited exceptions. In rare cases, a country may remove a refugee who poses a serious threat to national security or who has committed a very serious crime and is a danger to the public. These exceptions must be applied carefully and in line with international human rights standards (UNHCR, n.d.-b).

The Refugee Convention also excludes certain individuals from refugee status altogether. This includes people who have committed war crimes, crimes against humanity, serious non-political crimes, or acts that go against the principles of the United Nations. However, even when someone is excluded from refugee status, they are still protected under human rights law from being returned to torture or severe abuse (UNHCR, n.d.-b).

Furthermore, the international legal framework aims to strike a balance. It allows states to protect their borders and national security while ensuring that people fleeing serious harm are not sent back into danger. The main challenge today is not that the law is unclear or inadequate, but that global displacement and heavy pressure on asylum systems make these rules harder to apply consistently and fairly in practice.

3. Understanding Asylum “Abuse”

The phrase “**asylum abuse**” is often used in political and public discussions to suggest that people are misusing asylum systems. In reality, this term covers different situations, many of which are not illegal or dishonest. To respond fairly and effectively, it is important to separate true fraud from legal use of the system and from claims that are rejected for technical reasons. When these situations are all lumped together, the problem of abuse is often overstated, and the main purpose of asylum protection is weakened (Hathaway, 2021; Kerwin, 2020).

3.1 Fraudulent Claims: Intentional Lying

At one extreme are asylum claims that involve clear and intentional lying. This happens when someone knowingly provides false information, makes up stories of persecution, uses fake documents, or hides their true identity in order to obtain protection they do not actually need (Government Accountability Office, 2015).

However, evidence shows that confirmed cases of this kind of fraud are rare. A review by the U.S. Government Accountability Office found that between 2010 and 2014, asylum cases ended due to proven fraud were only a tiny fraction of the total number of cases decided each year (GAO, 2015). Other studies also show that common claims such as the idea that most asylum seekers are lying are not supported by facts (National Immigration Forum, 2024).

This does not mean fraud never happens. It does, and it should be addressed through proper investigations. But treating large numbers of denied asylum cases as proof of fraud is misleading and ignores the evidence. Doing so also risks unfairly labeling genuine asylum seekers as dishonest (Kerwin, 2020).

3.2 Strategic Use of the Asylum System

More common than outright fraud is the **strategic use** of the asylum system. This refers to people who apply for asylum not because they are in immediate danger, but because asylum is one of the few legal options available to remain in a country when other visas, such as work or study permits, are not accessible (Coutin, 2019).

Importantly, this behavior is **not illegal**. International and national asylum laws allow anyone who is physically present in a country to apply for asylum, regardless of how they entered or why they decided to apply. As long as the person meets the legal definition of a refugee, they have the right to have their claim reviewed. In this sense, strategic use reflects the structure of the system long processing times and limited migration pathways, rather than abuse of the law (Kerwin, 2020).

In Canada, for example, many recent asylum claims have been made by people who first entered the country on temporary visas and applied for asylum before those visas expired. While this raises valid concerns about system capacity and incentives, it does not automatically mean the claims are fraudulent or deceptive (Immigration, Refugees and Citizenship Canada [IRCC], 2025). Improving processing speed and decision quality is a more effective response than restricting access to asylum.

3.3 Denied Claims Are Not Proof of Dishonesty

A large number of asylum claims are rejected not because the applicant lied, but because they could not meet strict legal or evidence requirements. Many asylum seekers struggle to provide detailed documentation or present their case clearly, especially if they do not have a lawyer or are dealing with trauma, language barriers, or unfamiliar legal systems (Ramji-Nogales, Schoenholtz, and Schrag, 2007).

Research shows that having legal representation greatly increases the chances of a successful asylum claim. Lawyers help applicants organize their stories, gather evidence, and understand complex legal rules. Without this support, many people who may genuinely need protection are denied asylum simply because they cannot navigate the process effectively (Kerwin, 2020; Ramji-Nogales *et al.*, 2007).

For this reason, high denial rates should not be seen as proof of widespread abuse. Delays, lack of legal help, and differences in how decision-makers assess cases all play a major role. These are signs of system weaknesses, not evidence that most asylum seekers are trying to deceive the system.

4. Canada: Volume, Backlogs, and Policy Choices (Simplified)

Canada's asylum system has been under a lot of strain in recent years. More people are asking for protection, decisions are taking longer, and the government is still adjusting its policies to cope. These pressures come from both global events and Canada's own immigration rules.

4.1 Growing Number of Asylum Claims

In the past few years, Canada has seen a sharp rise in asylum claims. Government data shows that applications reached their highest levels ever in 2023 and 2024 (Immigration, Refugees and Citizenship Canada [IRCC], 2025a). Many people are fleeing war, violence, and economic hardship, which explains why more are seeking safety in countries like Canada.

That said, the numbers are not always the same. In some months in 2025, the number of new claims dropped compared to the previous year. This suggests that changes to visa rules and border policies may be affecting how and when people apply for asylum (IRCC, 2025a). In other words, asylum numbers rise and fall depending on world events and government decisions.

4.2 Backlogs and Long Waiting Times

A major problem in Canada's asylum system is the large backlog of cases. The Immigration and Refugee Board (IRB), which decides asylum claims, has more cases than it can process quickly.

As of recent years, hundreds of thousands of claims were still waiting for decisions, forcing many applicants to wait months or even years (Immigration and Refugee Board of Canada [IRB], 2025). This happens because more people are applying than the system can handle.

These delays create serious challenges. Asylum seekers are left in uncertainty about their future, decision-makers are overworked, and the public may lose trust in the system's effectiveness (Migration Policy Institute, 2025).

4.3 Government Policy Responses

To deal with these pressures, the Canadian government has introduced several changes. These include tighter visa screening, updates to processing rules, and administrative reforms aimed at reducing repeat or weak claims (IRCC, 2025b).

The government has also tried to speed up decisions by using digital tools and adding more resources to the IRB. At the same time, officials have expressed concern about people using asylum claims after entering Canada on temporary visas.

These actions are controversial. Some believe stronger controls are needed to protect the system from misuse. Others worry that stricter rules could block genuine refugees from getting the protection they need (United Nations High Commissioner for Refugees [UNHCR], 2025).

4.4 Finding the Right Balance

Canada's asylum system must strike a difficult balance. It needs to process claims faster to reduce backlogs, but it also must carefully review each case to avoid sending people back to danger.

Moving too fast can lead to mistakes, while too much scrutiny can slow the system even more. Because of this, Canada continues to adjust its policies in search of a fair system that is both efficient and humane (Goodwin-Gill and McAdam, 2007).

5. The United States: A Strained and Uneven Asylum System

The U.S. asylum system is based on international refugee law, but in practice it is complicated and overstretched. Even though the law gives people the right to ask for asylum, the system struggles with too many cases, limited resources, and frequent policy changes. This has led to long delays and uneven decisions.

5.1 How the U.S. Asylum System Works

U.S. asylum law comes from the Immigration and Nationality Act and the Refugee Act of 1980, which bring U.S. law in line with the 1951 Refugee Convention and its 1967 Protocol. Under these laws, people who are already in the United States can apply for asylum if they fear persecution because of their race, religion, nationality, political opinion, or social group (INA § 208).

There are two main ways to apply. Some people apply **affirmatively** through U.S. Citizenship and Immigration Services (USCIS). Others apply **defensively** while in removal proceedings before an immigration judge. Because these two paths are handled by different agencies, cases often move at different speeds and are judged differently depending on where and how the claim is filed (TRAC, 2026).

5.2 Huge Backlogs and Limited Capacity

One of the biggest problems in the U.S. asylum system is the massive backlog of cases. According to recent data, immigration courts are handling more than 3.3 million pending cases, many of which involve asylum claims (TRAC, 2026). Some applicants wait four years or longer before receiving a final decision (Migration Policy Institute, 2025).

These delays happen because there are not enough immigration judges, the number of new cases keeps growing, and the system is slow and inefficient. Long waits leave asylum seekers

stuck in uncertainty and make it harder for the system to function fairly (Ramji-Nogales, Schoenholtz, and Schrag, 2007).

Studies also show that asylum decisions can vary widely depending on the court or the judge handling the case. This has been described as an “asylum lottery,” where similar cases can have very different outcomes based simply on location (Ramji-Nogales *et al.*, 2007). This raises serious concerns about fairness and equal treatment under the law.

5.3 Fraud Concerns and System Safeguards

Despite public claims about widespread fraud, evidence shows that asylum fraud is not common in the U.S. system. There are already strong checks in place to detect false claims. USCIS has a Fraud Detection and National Security Directorate that conducts interviews, background checks, and works with law enforcement agencies (USCIS, 2025).

Applicants are also fingerprinted and checked against criminal and security databases. In some cases, documents are examined using forensic tools to confirm their authenticity (Government Accountability Office [GAO], 2015).

Government reviews have consistently found that confirmed fraud cases make up only a small percentage of all asylum applications. One major audit showed that fraud-related case closures were rare compared to the total number of cases processed (GAO, 2015).

5.4 Enforcement vs. Refugee Protection

Another major challenge is the tension between immigration enforcement and refugee protection. Under U.S. law, entering the country without authorization can be treated as a criminal offense (8 U.S.C. § 1325). However, international refugee law says that refugees should not be punished for illegal entry if they promptly report to authorities and are fleeing danger (UNHCR, 2025).

This creates legal conflicts. Some asylum seekers face criminal charges while also trying to pursue protection claims. Critics argue that this practice may violate international refugee standards and make it harder for vulnerable people to seek safety (Goodwin-Gill & McAdam, 2007).

5.5 The Real Problem: Lack of Resources

The biggest weakness in the U.S. asylum system is not the law itself, but the lack of resources to carry it out properly. While people have a legal right to apply for asylum, the institutions responsible for reviewing these cases do not have enough staff, funding, or capacity.

Research shows that long delays can harm fairness, increase court challenges, and lead to inconsistent decisions (Migration Policy Institute, 2025). Over time, this risks turning a system meant to protect human rights into one defined by delay, uncertainty, and unequal outcomes depending on where a case is heard.

6. Human Rights Implications

The human rights impact of asylum laws becomes clear when the system fails to protect people who truly need safety. Asylum is not just about immigration rules, it is meant to protect lives. When someone who genuinely faces persecution or torture is wrongly refused asylum, they may be sent back to imprisonment, violence, or even death (UNHCR, 2025).

6.1 The Risk of Wrong Decisions

Asylum decisions often depend on whether officials believe an applicant's story and whether enough evidence is provided. This is not easy. Many asylum seekers flee suddenly and do not have documents. Others have experienced trauma, which can affect how clearly they remember or explain events. These difficulties can sometimes be mistaken for lying (Goodwin-Gill and McAdam, 2007).

Research shows that outcomes can also depend on factors that have nothing to do with the truth of a claim, such as whether the person has a lawyer, how experienced the decision-maker is, or where the hearing takes place. This means two people with very similar stories can receive very different decisions (Ramji-Nogales, Schoenholtz, and Schrag, 2007).

Because of this, wrongful refusal is one of the most serious dangers in asylum systems. A wrong decision is not just a paperwork error, it can put a person's life at risk.

6.2 The Absolute Ban on Torture and Unsafe Returns

International human rights law sets firm limits on what governments can do. Under the Convention Against Torture, no country is allowed to send a person to a place where they face a real risk of torture. This rule applies in all cases, even if the person does not qualify as a refugee or has committed crimes (UNHCR, 2025).

This means that someone can be denied refugee status and still be protected from removal if returning them would expose them to torture or severe harm. This overlap between asylum law and human rights law ensures that protection against extreme abuse is always in place (Goodwin-Gill and McAdam, 2007).

6.3 Why Credibility Decisions Matter So Much

Deciding whether someone is telling the truth is one of the hardest parts of asylum cases. Decision-makers must judge whether a person's story makes sense and matches the available evidence. But trauma, fear, and stress can affect how people speak and remember.

Studies show that survivors of violence may recall events in fragments or avoid painful details. Language barriers and cultural differences can also cause misunderstandings (Ramji-Nogales *et al.*, 2007). As a result, people who are genuinely in danger can sometimes be wrongly seen as not believable.

Because the consequences are so serious, even small mistakes in judging credibility can have devastating results.

6.4 Access to Justice Is a Human Rights Issue

Having a lawyer makes a major difference in asylum cases. Yet in many countries, including Canada and the United States, asylum seekers are not guaranteed free legal representation. Many are left to navigate complex legal systems on their own.

Research consistently shows that people with legal help are far more likely to succeed and less likely to make procedural mistakes (Ramji-Nogales *et al.*, 2007). This raises serious human rights concerns, because a fair system depends not just on having laws, but on whether people can realistically use them.

6.5 The Overall Human Rights Balance

Asylum systems are expected to protect borders and maintain security while also protecting people fleeing serious harm. International human rights law draws a clear line: no one should be sent back to persecution or torture under any circumstances (UNHCR, 2025).

The main challenge is not the lack of legal rules, but how those rules are applied in systems that are often overwhelmed. When asylum systems are under pressure, the risk of human rights violations increases through long delays, inconsistent decisions, or unfair procedures.

7. Rethinking Integrity and Protection

Asylum debates are often presented as a choice between two things: protecting refugees or protecting the system from abuse. In reality, this is not a real choice. A strong asylum system must do both at the same time. It needs to protect people who are truly in danger, while also making accurate decisions that the public can trust (UNHCR, 2025).

7.1 Speed and Fairness Go Hand in Hand

One of the biggest problems in many asylum systems is how long cases take. When decisions drag on for years, it creates problems for everyone. Long delays can encourage some people to apply just to remain legally in a country while they wait. At the same time, genuine refugees are left in limbo, unable to plan their lives or feel secure (Migration Policy Institute, 2025).

Making decisions faster can help reduce these pressures. But speed alone is not the answer. If cases are rushed without careful review, mistakes are more likely, especially wrongful refusals that put people at risk. This is why experts stress that the real goal should be decisions that are both timely and fair, not simply faster approvals or rejections (Goodwin-Gill and McAdam, 2007).

7.2 Legal Help Makes the System More Accurate

Having a lawyer makes a huge difference in asylum cases. Many asylum seekers do not understand complex legal rules or know what kind of evidence they need. Without legal support, even strong and genuine claims can be poorly presented and rejected for technical reasons.

Research shows that people with legal representation are much more likely to receive correct and consistent decisions than those without lawyers (Ramji-Nogales, Schoenholtz, and Schrag, 2007). This means legal aid does not just help applicants, it improves the quality and reliability of the entire system.

From a policy point of view, access to legal representation reduces both false approvals and false refusals. In this way, it strengthens system integrity rather than undermining it.

7.3 Focus on Real Sources of Abuse

When abuse happens in asylum systems, it is often not driven by individual applicants acting alone. Instead, it is frequently linked to organised actors, such as dishonest or unregulated immigration consultants who encourage people to lie or submit fake claims.

A more effective solution is to focus enforcement on these facilitators rather than making the system harder for everyone. This includes stronger rules for immigration advisers, tougher penalties for fraudulent representatives, and better cooperation between countries to disrupt abuse networks (Kerwin, 2020).

Targeting the real sources of abuse is more effective and less harmful than broad restrictions that also block access for people who genuinely need protection.

7.4 Building a Fair and Trusted System

A healthy asylum system does not treat integrity and protection as opposites. Integrity means making the right decisions based on evidence and the law. Protection means ensuring that people who qualify as refugees are not sent back to danger.

When systems are properly funded, well-staffed, and fair, both goals can be achieved at the same time. But when systems are overwhelmed or under-resourced, mistakes increase and public trust suffers.

In the end, strengthening asylum systems requires investing in faster and fairer processing, legal assistance, and targeted enforcement against real abuse, not limiting access to protection itself (UNHCR, 2025).

8. Conclusion

Asylum law deals with one of the most serious decisions a country can make: deciding who is allowed to stay in safety and who may be sent back to danger. This is what makes asylum different from most other areas of immigration law. When mistakes happen, the consequences are not just paperwork or legal errors, they can affect someone's freedom, safety, or even their life.

This paper shows that the way asylum is often discussed in public, especially as a simple battle between "abuse" and "protection" does not reflect reality. Asylum systems are far more complex. While some cases do involve dishonesty or misuse, these are only a small part of the overall picture. Many rejected claims fail not because people lied, but because of real challenges such as lack of documents, language difficulties, trauma, and limited access to legal help (Goodwin-Gill and McAdam, 2007).

There is also little evidence to support the idea that asylum systems are mostly overwhelmed by fraud. Most asylum seekers are not trying to take advantage of the system. Instead, they are trying to navigate a complicated and slow legal process while coping with displacement and uncertainty (UNHCR, 2025). Treating abuse as the main problem risks leading to policies that unintentionally harm people who genuinely need protection.

A central conclusion of this analysis is that the main challenge facing asylum systems is structural, not moral. States have a legal duty under international law not to return people to persecution or torture. At the same time, they must manage growing numbers of applications

with limited staff and resources. When systems are overloaded, delays grow, decisions become inconsistent, and errors are more likely. This can make it look like the system is being abused, even when most applicants are acting within the law (Migration Policy Institute, 2025).

Importantly, fairness and system integrity are not opposites. They depend on each other. A system that is too weak risks letting false claims slip through and losing public trust. But a system that is too strict or focused on deterrence risks wrongly rejecting people who truly need protection. Both outcomes weaken the credibility of asylum law in different ways (Ramji-Nogales, Schoenholtz, and Schrag, 2007).

The best way forward is not to see asylum as either too generous or too easily abused, but as a governance challenge that needs better systems and stronger institutions. This means faster but still careful decision-making, better access to legal representation, stronger oversight of dishonest intermediaries, and enough resources for decision-makers. These steps improve accuracy rather than simply increasing approvals or denials.

In the end, a trustworthy asylum system is one that consistently makes the right decisions based on law and evidence, while honouring its duty to protect people fleeing serious harm. The goal is not to choose between enforcement and protection, but to ensure that both are carried out fairly, legally, and in a way that can last over time. When this balance is achieved, asylum systems can protect lives while also maintaining public confidence and legitimacy.

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