



# “I Didn’t Feel Like a Human in There”

Immigration Detention in Canada and its Impact on Mental Health

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and its Impact on Mental Health

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Printed in the United States of America

ISBN: 978-1-62313-913-1

Cover design by Rafael Jimenez

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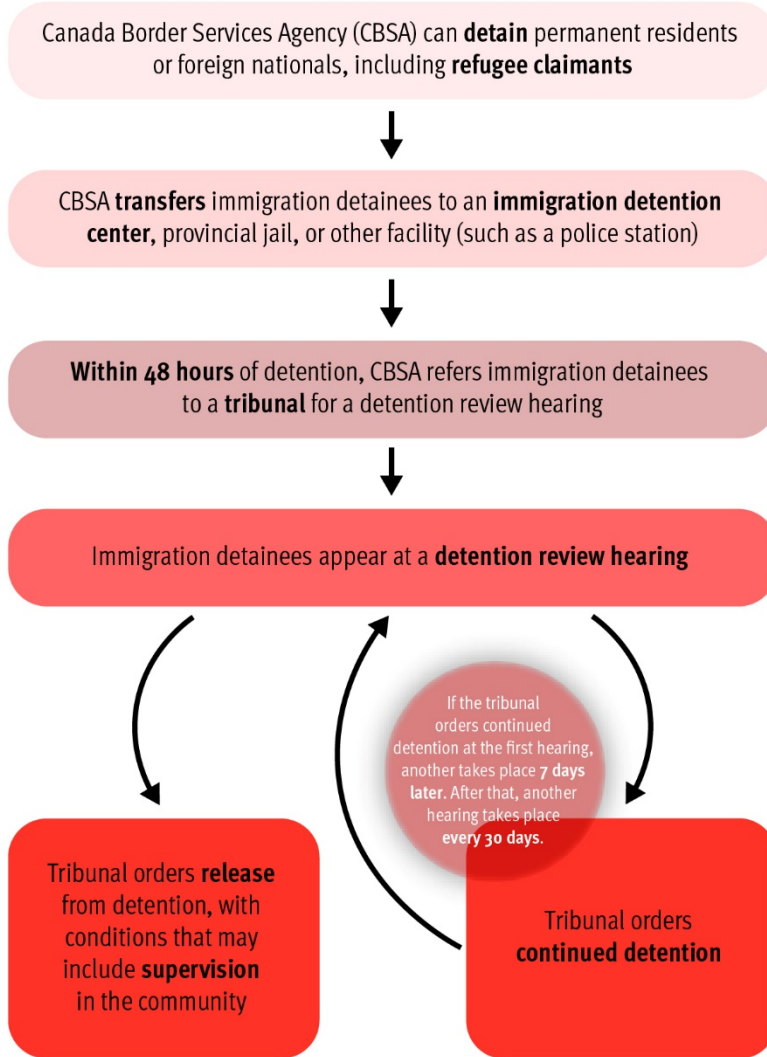
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# Map

## Facilities Where Immigration Detainees are Held Across Canada



# Immigration Detention Process in Canada



## Glossary of Terms

**Child:** The word “child” refers to someone under the age of 18. The Convention on the Rights of the Child states that “a child means every human being below the age of 18 years unless under the law applicable to the child, majority is attained earlier.”<sup>1</sup>

**Designated representative:** A person appointed by the Canadian tribunal conducting detention review hearings to protect the interests of an immigration detainee, who is either a child or is “unable to appreciate the nature of the proceedings.”<sup>2</sup>

**Detention review hearing:** A hearing conducted by the Immigration Division of the Immigration and Refugee Board of Canada to determine whether to order release or continued detention in a given case.

**Immigration Division:** A section of the Immigration and Refugee Board of Canada that conducts detention review hearings to determine whether to order release or continued detention in a given case.

**Immigration holding center:** Detention facility that resembles and operates like a medium security prison, dedicated to holding immigration detainees in Canada.

**Legal capacity:** The right of an individual to hold rights and duties, and to be an actor under the law, on an equal basis with others.<sup>3</sup> The concept of legal capacity encompasses the right to personhood, being recognized as a person before the law, and legal agency, i.e., the capacity to act and exercise those rights.<sup>4</sup>

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<sup>1</sup> Convention on the Rights of the Child (CRC), adopted November 20, 1989, G.A. Res. 44/25, annex, 44 U.N. GAOR Supp. (No. 49) at 167, UN Doc. A/44/49 (1989), entered into force September 2, 1990, ratified by Canada December 13, 1991, art. 1.

<sup>2</sup> Immigration and Refugee Protection Act, SC 2001, c 27, <https://laws.justice.gc.ca/eng/acts/i-2.5/> (accessed May 15, 2021), section 167 (Immigration and Refugee Protection Act); Immigration Division Rules, SOR/2002-229, <https://www.laws-lois.justice.gc.ca/eng/regulations/SOR-2002-229/index.html> (accessed May 15, 2021), section 18 (Immigration Division Rules).

<sup>3</sup> UN Convention on the Rights of Persons with Disabilities (CRPD), adopted December 13, 2006, G.A. Res. 61/106, Annex I, UN GAOR, 61st Sess., Supp. (No. 49) at 65, UN Doc. A/61/49 (2006), entered into force May 3, 2008, ratified by Canada March 11, 2010, art.12. UN Committee on the Rights of Persons with Disabilities (“CRPD Committee”), General comment No. 1, Article 12: Equal recognition before the law, UN Doc. CRPD/C/GC/1 (2014), para. 12.

<sup>4</sup> CRPD Committee, General comment No. 1, para. 14. International Disability Alliance, “Legal Opinion on Article 12 of CRPD,” undated, <https://www.internationaldisabilityalliance.org/resources/legal-opinion-article-12-crpd> (accessed May 15, 2021).



**Psychosocial disability:** The preferred term to describe people with mental health conditions such as depression, bipolar, schizophrenia, and catatonia. The term “psychosocial disability” describes conditions commonly referred to—particularly by mental health professionals, courts, lawyers, corrections officials, and the media—as “mental illness” or “mental disorders.” The Convention on the Rights of Persons with Disabilities recognizes that disability is an evolving concept and that it results from the interaction between people with impairments and social, cultural, attitudinal, and environmental barriers that prevent their full and effective participation in society on an equal basis with others.<sup>5</sup> The term “psychosocial disability” is preferred as it expresses the interaction between psychological differences and social or cultural limits for behavior, as well as the stigma that society attaches to people with mental impairments.<sup>6</sup>

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<sup>5</sup> CRPD, Preamble.

<sup>6</sup> World Network of Users and Survivors of Psychiatry, “Implementation Manual for the United Nations Convention on the Rights of Persons with Disabilities,” February 2008, [http://wnusp.net/documents/WNUSP\\_CRPD\\_Manual.pdf](http://wnusp.net/documents/WNUSP_CRPD_Manual.pdf) (accessed May 16, 2021), p. 9.

## **Acronyms**

<b>ATD</b>	-	Alternatives to detention
<b>CBSA</b>	-	Canada Border Services Agency
<b>CCMS</b>	-	Community case management and supervision
<b>CRPD</b>	-	Convention on the Rights of Persons with Disabilities
<b>IRB</b>	-	Immigration and Refugee Board of Canada
<b>IRPA</b>	-	Immigration and Refugee Protection Act
<b>NGO</b>	-	Nongovernmental organization
<b>NRAD</b>	-	National Risk Assessment for Detention



## Summary

One of the [border] officers said to me: “Canada is a free country for Canadians, not for foreigners.” He seemed very happy to tell me: “You’re going to sleep in jail tonight.” The other officers were laughing about this....

Immigration detention changed the way I see Canada. Before I came here, for me Canada was one of the best places in the world. For everyone who fled from persecution, it’s the perfect place for everyone who is looking for peace and a better life. But when I saw this, I thought, all that we hear about Canada is fake, it’s just cinema.

– “Idriss,” refugee claimant and former immigration detainee, incarcerated in the Laval immigration holding center in 2020

Despite its reputation as a refugee-welcoming and multicultural country, Canada incarcerates thousands of people on immigration-related grounds every year, including people who are fleeing persecution, those seeking employment and a better life, and people who have lived in Canada since childhood. Immigration detainees are held for non-criminal purposes but endure some of the most restrictive conditions of confinement in the country, including maximum security jails and solitary confinement, with no set release date.

Figures from the Canada Border Services Agency (CBSA) reveal that the number of immigration detainees incarcerated in Canada has increased every fiscal year between 2016-17 and 2019-20, peaking in fiscal year 2019-20 with a total of 8,825 people in immigration detention. Since the onset of the Covid-19 pandemic in March 2020, Canadian authorities have released immigration detainees at unprecedented rates, providing clear evidence that there are viable alternatives to depriving people of their liberty for indeterminate periods of time. For many of those who remained incarcerated, conditions of detention became harsher, with far more frequent lockdowns and limited access to phones and showers. During the first year of the pandemic, immigration detainees went on hunger strike three times at the Montreal-area immigration holding center.

CBSA has sweeping police powers—including the powers of arrest, detention, and search and seizure—but it remains the only major law enforcement agency in Canada without independent civilian oversight to review policies or investigate misconduct. CBSA’s mistreatment of immigration detainees is widely reported across Canada by legal representatives, advocates, mental health professionals, frontline workers supporting immigration detainees, and former immigration detainees themselves.

The agency has full discretion over where immigration detainees are held. Between fiscal years 2016-17 and 2019-20, approximately two-thirds of immigration detainees were held in immigration holding centers, which resemble medium security prisons dedicated exclusively to immigration detainees, in the provinces of Ontario, Quebec, and British Columbia. During this period, CBSA also incarcerated thousands of immigration detainees—1,932 in 2019-20 alone—in provincial jails, alongside criminally accused individuals awaiting court proceedings and criminally convicted individuals serving sentences of up to two years. Many of these provincial jails are maximum-security facilities. A minority of immigration detainees were held in other facilities, such as police stations. Following the onset of the Covid-19 pandemic, CBSA held about half of all immigration detainees in provincial jails, up from about a fifth of detainees prior to the pandemic.

While immigration detainees are not serving criminal sentences, they are often treated like people incarcerated for criminal offences: handcuffed, shackled, searched, subjected to solitary confinement, and restricted to small spaces with rigid routines and under constant surveillance, with severely limited access to the outside world. In provincial jails, many immigration detainees are confined in tense and even dangerous environments where they may be subjected to violence. Immigration detainees who are from communities of color, particularly detainees who are Black, appear to be incarcerated for longer periods in immigration detention and they are often detained in provincial jails rather than immigration holding centers.

Over the past few years, litigation and advocacy efforts by many grassroots activists and organizations, academics, legal clinics, and nongovernmental organizations (NGOs) have focused on the mental health consequences of detention, the impact of detention on children, and procedural fairness in detention review hearings.



Based on research conducted between February 2020 and March 2021, this joint report by Human Rights Watch and Amnesty International documents serious international human rights violations that immigration detainees, particularly persons with psychosocial disabilities, face in Canada. Research included interviews with former immigration detainees and their relatives, mental health experts, academics whose research focuses on immigration detention, lawyers, civil society representatives, and government officials.

Canada is among the few countries in the global north without a legal limit on the length of immigration detention, meaning that under Canadian law, immigration detainees are at risk of being detained indefinitely. Human Rights Watch and Amnesty International found that since 2016 Canada has held more than 300 immigration detainees for longer than a year. The longest period of detention lasted over 11 years and involved a man with an apparent mental health condition, who was subjected to solitary confinement in jail and whose identity the government could not establish.

Studies of refugee claimants have shown that immigration detention can have devastating effects on mental health. For many detainees, not knowing how long they will be detained causes trauma, distress, and a sense of powerlessness. Detention can exacerbate existing psychosocial disabilities and frequently triggers new ones, including depression, anxiety, and post-traumatic stress. Scientific research has also shown that even brief periods of immigration detention caused significant deterioration of mental health in refugee claimants. According to our research, many immigration detainees develop suicidal ideation as they begin to lose hope, particularly those fleeing traumatic experiences and persecution in search of safety and protection in Canada. Immigration detention has especially harmful effects on communities of color, refugee claimants, children, and families.

Immigration detainees with mental health conditions face discrimination throughout the detention process: they are more likely to be detained in provincial jails, rather than immigration holding centers (which are dedicated exclusively to immigration detainees); in Ontario provincial jails, they are often placed in solitary confinement; they may not be allowed to make independent decisions about their legal matters, with tribunal-appointed representatives acting on their behalf as substitute decision-makers; they face significant barriers to release from detention; and, in the event that they are released, they are more likely to face onerous release conditions within the community, which may lead to

re-arrest. Put simply, authorities often view psychosocial disabilities as a risk factor; instead of receiving vital support, immigration detainees with psychosocial disabilities receive disproportionately coercive treatment.

CBSA officials indicated to Human Rights Watch and Amnesty International researchers that individuals with mental health conditions may be detained in a provincial jail (rather than an immigration holding center) in order to “effectively manage them in light of their behavior” or to facilitate “access to specialized care.” This is a discriminatory policy and practice. CBSA has the sole discretion to categorize immigration detainees as “medium risk” or “high risk,” which may determine their place of detention: provincial jail or an immigration holding center. The agency’s enforcement manual explicitly links “instability ... associated with mental imbalance” with “danger.”

Lawyers have noted that some immigration detainees have been held in provincial jails at least in part because of symptoms associated with psychosocial disabilities, including suicidal ideation, or medical issues. In such cases, CBSA officials frequently frame behaviors of people with psychosocial disabilities or mental health deterioration as “non-cooperation” and reasons to continue detention.

In an interview with researchers, CBSA officials sought to justify the use of provincial jails by claiming that detainees with psychosocial disabilities can access “specialized care” in those facilities. However, mental health treatment in provincial jails is woefully inadequate. According to a 2020 independent review of the treatment of people with mental health conditions in Ontario provincial jails, which was instigated by a Human Rights Tribunal of Ontario order, “Prolonged segregation (15 days or longer) remains a routine practice for individuals with mental health and/or suicide risk alerts on file.” The report also found that solitary confinement practices “function in a discriminatory manner” against people with mental health conditions and that “specialized care” may amount to “segregation by another name.”

According to our research, many former immigration detainees continue to live with the effects of psychosocial disabilities they developed during incarceration, months and even years after their release from detention. Immigration detention also has long-term consequences that ripple beyond immigration detainees and affect their children, loved ones, and communities. In many cases, the only way immigration detainees can be

released is with the help of a bondsperson or guarantor who is often a relative or friend, and who is tasked with ensuring former detainees abide by conditions of release. These vital relationships may be harmed as the border agency relies on surveillance and monitoring by guarantors and bondspersons in homes and communities. Immigration detention deeply impacts individuals' trust in law enforcement and the justice system, whether they experienced detention themselves or were impacted by the detention system through a loved one.

Over the past few years, the Canadian government has introduced new policies, guidelines, and regulatory reforms in response to litigation and advocacy efforts around immigration detention. However, this approach has largely failed to address the deeply embedded structural gaps that disproportionately affect persons with psychosocial disabilities in immigration detention. Canada's treatment of individuals with mental health conditions in immigration detention is discriminatory and in breach of Canada's obligations under international human rights law. Immigration detention should gradually be abolished in Canada. Under no circumstances should a person for immigration-related reasons be treated in a punitive manner, including being subjected to solitary confinement, or detained in facilities used for criminal law enforcement, such as jails, prisons, or police stations, or in jail-like facilities. Significant structural and legislative changes are essential in addressing the deeply embedded systemic violations against individuals in immigration detention.

As an immigration and refugee lawyer in Vancouver said in November 2020, "If we truly believed that immigration detainees feel pain, anxiety, love, and hope the way we do – incarceration would not be the solution. This could only be the solution if we truly believe they are not as much human as we are."

## **Key Recommendations to the Government of Canada**

- Gradually abolish immigration detention. Under no circumstances should a person for immigration-related reasons be treated in a punitive manner, including being subjected to solitary confinement, or detained in facilities used for criminal law enforcement, such as jails, prisons, or police stations, or in jail-like facilities.
- End the use of solitary confinement in immigration detention.
- Establish an independent body responsible for overseeing and investigating CBSA, with which immigration detainees can lodge complaints in the event of allegations of abuse, neglect, or other human rights concerns, to hold the government accountable. This oversight body should have the authority to order meaningful remedies and penalties and initiate its own reviews and investigations, including unannounced inspections, and not be driven solely by complaints. The oversight body should also allow for third parties, such as nongovernmental organizations, to file complaints regarding matters relating to individual cases as well as CBSA policies and practices.
- Sign and ratify the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, to allow for international inspection of all sites of detention.
- Conduct a national independent review of the immigration detention system focusing on systemic racism and discrimination against persons with disabilities, particularly those with actual or perceived mental health conditions.
- Withdraw Canada's declaration and reservation to Article 12 of the Convention on the Rights of Persons with Disabilities.

## **Methodology**

This joint report by Human Rights Watch and Amnesty International documents serious international human rights violations that immigration detainees, particularly persons with psychosocial disabilities, face in Canada.

Researchers from both organizations conducted research for this report between February 2020 and March 2021, interviewing a total of ninety people, including twenty-four people who were held in immigration detention between 2007 and 2020 for periods ranging between three days and nearly six years, and one person who was in detention at the time of the interview in 2021.

Researchers also interviewed thirty-seven lawyers and legal representatives, five designated representatives of immigration detainees, three mental health experts and doctors, four academics, seven service providers and representatives of NGOs, four family members of former immigration detainees, three CBSA officials, and two representatives of the Immigration and Refugee Board's Immigration Division.

Researchers reviewed relevant publications, including reports and papers by NGOs, academia, and government bodies, domestic and international media reports, and United Nations documents.

In addition, researchers submitted a total of 112 requests for government documentation to the CBSA, the Immigration and Refugee Board, and corrections ministries with jurisdiction over provincial jails where immigration detainees are held in all 10 provinces and 2 of the 3 territories. Of the 112 requests, 105 were answered. Researchers followed up with letters to corrections ministries in all ten provinces to request further information regarding their agreements with the Canada Border Services Agency in the context of immigration detention, and received a substantive response from one of the provincial ministers. Finally, after meeting with CBSA representatives in February 2021, researchers emailed further questions to the agency in the same month and received a response in April 2021. Efforts have been made to incorporate the response where relevant in the report.



Human Rights Watch and Amnesty International shared the report's preliminary findings with CBSA and the Immigration and Refugee Board in May 2021 and invited both government bodies to respond. Both responded with offers to meet, and the Immigration and Refugee Board provided a written response.

Travel and field research were limited due to the Covid-19 pandemic, and as a result, researchers were unable to visit detention facilities. Access to immigration detainees and former immigration detainees was a key challenge, not only because of pandemic-related restrictions, but also because of individuals' fears of reprisal by CBSA and continued uncertainties with respect to their legal status in Canada. Human Rights Watch and Amnesty International relied on advocates, lawyers, and service providers to identify current and former immigration detainees who were willing to be interviewed, and some interviewees also recommended other former immigration detainees who expressed a desire to be interviewed.

Researchers informed all interviewees of the purpose of the interview and the way in which the information would be used. No remuneration or incentives were promised or provided to people interviewed. All interviewees were asked to consent before the interview began and were told they could decline to answer questions and end the interview at any time. Interviews were conducted on a voluntary basis and lasted between 30 minutes and 3 hours. Interviews were conducted in person, on the phone, or via video call, in English and French, with the help of interpreters where necessary.

The names of all the former immigration detainees interviewed for this report were withheld and several were assigned pseudonyms, with the exception of publicly reported cases. All pseudonyms appear in quotation marks on first reference. Any identifying information, such as location, interview date, or distinctive case details, has also been withheld to respect confidentiality and protect from possible reprisals by immigration authorities or agents of persecution in former detainees' countries of origin. The names of other interviewees, including lawyers, service providers, members of civil society organizations, and advocates, were also withheld to protect their clients and beneficiaries from reprisals by immigration authorities.

Human Rights Watch and Amnesty International made every effort to corroborate claims via media reports, direct observation, medical or psychiatric records, and interviews with legal representatives, where relevant. Pro bono lawyers and advocates reviewed the report's findings, as well as all relevant domestic and international legislation.

# I. Background

## Overview of the Immigration Detention System in Canada

In Canada, immigration detention is implemented by several government bodies with intersecting jurisdictions. The Minister of Immigration, Refugees and Citizenship Canada has general jurisdiction over the administration of the Immigration and Refugee Protection Act (IRPA).<sup>7</sup> The Minister of Public Safety and Emergency Preparedness is responsible for enforcement of IRPA, including arrest, detention, and removals,<sup>8</sup> and has delegated and designated these enforcement responsibilities to CBSA, established in 2003.<sup>9</sup>

### *Decision to Detain, Grounds of Detention, and Site of Detention*

CBSA has sweeping police powers, including the powers of arrest, detention, intelligence-gathering, and search and seizure.<sup>10</sup> In the context of immigration detention, CBSA exercises jurisdiction over who is arrested and detained under IRPA, the grounds of detention, and where immigration detainees are held.

CBSA has authority to arrest and detain foreign nationals, including refugee claimants and permanent residents, within Canada where an officer has reasonable grounds to believe that they are inadmissible to Canada and constitute a “danger to the public,” or are unlikely to appear for an examination or other proceeding.<sup>11</sup> CBSA officers do not need a warrant, except with respect to “protected persons.”<sup>12</sup> CBSA officers may also arrest and detain foreign nationals without a warrant in cases where officers are not satisfied of their identity or for the purposes of completing an examination of their status upon entering

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<sup>7</sup> Immigration and Refugee Protection Act, section 4.

<sup>8</sup> Ibid.

<sup>9</sup> Minister of Public Safety and Emergency Preparedness, “Delegation of Authority and Designations of Officers by the Minister of Public Safety and Emergency Preparedness under the Immigration and Refugee Protection Act and the Immigration and Refugee Protection Regulations,” Ottawa, November 28, 2017, <https://www.cbsa-asfc.gc.ca/agency-agence/actreg-loireg/delegation/irpa-lipr-2016-07-eng.html> (accessed May 15, 2021).

<sup>10</sup> British Columbia Civil Liberties Association, “Oversight at the Border: A Model for Independent Accountability at the Canada Border Services Agency,” 2017, <https://bccla.org/wp-content/uploads/2017/06/FINAL-for-web-BCCLA-CBSA-Oversight.pdf> (accessed May 15, 2021), p.12.

<sup>11</sup> Immigration and Refugee Protection Act, section 55.

<sup>12</sup> Ibid. A protected person is a person who is granted refugee protection, which is not subsequently revoked (Immigration and Refugee Protection Act, section 95).

Canada.<sup>13</sup> Finally, individuals may be arrested and detained without a warrant upon entering Canada if a CBSA officer suspects that they are inadmissible to Canada because they pose a security risk, have violated “human or international rights,” or have participated in criminal activity or organized crime.<sup>14</sup>

Despite its sweeping police powers, CBSA is the only major law enforcement agency in Canada without independent civilian oversight. The Immigration and Refugee Protection Act and its regulations do not have any provisions for independent monitoring of detention facilities and Canada has not ratified the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, which allows for independent monitoring by the United Nations.

Although immigration detainees are held on administrative grounds—that is, for non-criminal purposes—Canada subjects them to some of the most restrictive detention conditions in the country. CBSA has the sole authority to decide where immigration detainees are held: immigration holding centers, provincial jails, or other facilities.<sup>15</sup> Provincial jails are designed to hold those awaiting criminal court proceedings or serving criminal sentences of up to two years.<sup>16</sup> Several lawyers indicated that immigration detainees are held in the same wings and cells as detainees who are held on criminal charges or convictions, and former immigration detainees corroborated this.<sup>17</sup> CBSA also detains individuals at other facilities, such as local and provincial police cells, ports of entry, inland enforcement cells and Royal Canadian Mounted Police detachments, usually

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<sup>13</sup> Ibid.

<sup>14</sup> Ibid.

<sup>15</sup> *Ebrahim Toure v. Minister of Public Safety*, 2017 ONSC 5878, paras. 71-72.

<sup>16</sup> Correctional and Conditional Release Act, SC 1992, c 20, <https://laws-lois.justice.gc.ca/eng/acts/C-44.6/index.html> (accessed May 15, 2021), section 16(1)(b).

<sup>17</sup> Interviews with immigration and refugee lawyer (name withheld), Ottawa, December 2020, immigration and refugee lawyer (name withheld), Nova Scotia, January 2021, immigration and refugee lawyer (name withheld), Nova Scotia, December 2020, immigration and refugee lawyer (name withheld), Saskatoon, January 2021, “Charles,” former immigration detainee (name withheld), Toronto, December 2020, “Joseph,” former immigration detainee (name withheld), Toronto, December 2020, “Jason,” former immigration detainee (name withheld), Toronto, December 2020, Abdirahmaan Warssama, former immigration detainee, Toronto, August 2020, “Diego,” former immigration detainee (name withheld), Ottawa, January 2021, “Isaias,” former immigration detainee (name withheld), Toronto, December 2020, “Jonathan,” former immigration detainee (name withheld), Toronto, December 2020, “Omar,” former immigration detainee (name withheld), Montreal, February 2021, and “Ana,” former immigration detainee (name withheld), Vancouver, December 2020.

for a few days or less until they are transferred to a provincial jail or immigration holding center.<sup>18</sup>

The Laval, Quebec Immigration Holding Center has a maximum capacity of 109 detainees and holds individuals apprehended in Quebec, the Atlantic region, and Northern Ontario (including Cornwall and Ottawa).<sup>19</sup> The facility is operated under a memorandum of understanding with the Correctional Services of Canada, which owns the facility. The facility consists of three buildings that provide separate living units for men, women, and families or unaccompanied children.

The Toronto, Ontario immigration holding center has a maximum capacity of 183 detainees and holds individuals apprehended in the Greater Toronto Area, Southern Ontario, and Northern Ontario (except Cornwall and Ottawa).<sup>20</sup> The facility is operated under a third-party service contract with a vendor that provides the facility to CBSA. The facility consists of a three-story building and provides separate living units for men, women, and families.

The Surrey, British Columbia immigration holding center has a maximum capacity of 70 detainees and holds individuals apprehended in the Pacific region and the Prairies.<sup>21</sup> CBSA owns the facility, and the agency has third-party service contracts for the provision of services within the facility. The two-story facility provides separate living units for men, women, and families.

Canada also holds immigration detainees in three immigration holding centers across the country.<sup>22</sup> Immigration holding centers are operated by CBSA regional staff and are supported by contracted guard services.<sup>23</sup> These facilities resemble and operate like

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<sup>18</sup> Canada Border Services Agency, “ENF 20: Detention,” March 23, 2020, <https://www.canada.ca/content/dam/ircc/migration/ircc/english/resources/manuals/enf/enf20-det-en.pdf> (accessed May 15, 2021), section 7.

<sup>19</sup> Canada Border Services Agency, “Immigration holding centres,” March 11, 2020, [https://www.cbsa-asfc.gc.ca/security-secureite/ihc-csi-eng.html#\\_s1](https://www.cbsa-asfc.gc.ca/security-secureite/ihc-csi-eng.html#_s1) (accessed May 15, 2021).

<sup>20</sup> Ibid.

<sup>21</sup> Ibid.

<sup>22</sup> Canada Border Services Agency, “ENF 20: Detention,” March 23, 2020, <https://www.canada.ca/content/dam/ircc/migration/ircc/english/resources/manuals/enf/enf20-det-en.pdf> (accessed May 15, 2021), section 7; Canada Border Services Agency, “Immigration holding centres,” March 11, 2020, [https://www.cbsa-asfc.gc.ca/security-secureite/ihc-csi-eng.html#\\_s1](https://www.cbsa-asfc.gc.ca/security-secureite/ihc-csi-eng.html#_s1) (accessed May 15, 2021).

<sup>23</sup> Canada Border Services Agency, unpublished document on file with Human Rights Watch and Amnesty International, April 2021.



medium security prisons, with significant restrictions on privacy and liberty, rigid rules and daily routines, and punitive measures in response to failures to follow rules and orders.<sup>24</sup>

Detainees in immigration holding centers are under constant surveillance by uniformed guards and cameras.<sup>25</sup> They are repeatedly searched. Immigration holding centers have centrally-controlled locked doors and movement within different areas of the facilities is restricted, requiring a guard escort.<sup>26</sup> Some basic personal effects, like cellphones and electronic devices, are contraband.<sup>27</sup> Communication with loved ones, legal representatives, and community supports is restricted to phone calls using the immigration holding center phones or in-person visitation at designated times.<sup>28</sup>

Detainees who fail to abide by the strict rules may be punished with isolation, including in conditions akin to solitary confinement, withdrawal of privileges such as visits, or even transfer to a provincial jail.<sup>29</sup>

According to CBSA policy, in areas where no immigration holding center is in close proximity, the agency automatically holds immigration detainees in provincial jails,

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<sup>24</sup> Hanna Gros and Yolanda Song, “No Life for a Child”: A Roadmap to End Immigration Detention of Children and Family Separation,” 2016, International Human Rights Program, University of Toronto’s Faculty of Law, [https://ihrp.law.utoronto.ca/utfl\\_file/count/PUBLICATIONS/Report-NoLifeForAChild.pdf](https://ihrp.law.utoronto.ca/utfl_file/count/PUBLICATIONS/Report-NoLifeForAChild.pdf) (accessed May 15, 2021); Hanna Gros, “Invisible Citizens: Canadian Children in Immigration Detention,” 2017, International Human Rights Program, University of Toronto’s Faculty of Law, [https://ihrp.law.utoronto.ca/utfl\\_file/count/PUBLICATIONS/Report-InvisibleCitizens.pdf](https://ihrp.law.utoronto.ca/utfl_file/count/PUBLICATIONS/Report-InvisibleCitizens.pdf) (accessed May 15, 2021). See also Janet Cleveland, “Not so short and sweet: Immigration detention in Canada,” in Amy Nethery and Stephanie J Silverman, eds., *Immigration Detention: The Migration of a Policy and its Human Impact* (New York: Routledge, 2015). In response to researchers’ inquiry regarding the rationale for strict routines that require attendance at mealtimes and obligate detainees to wake up and go to bed at specific times, CBSA representatives indicated, in part: “Establishing a routine is important to help them [immigration detainees] cope with change/uncertainty, and reduce stress levels. ... In regard to wake up times and bed times, the same principle applies—research shows that maintaining a regular bed time and wake up time (routine) and getting sufficient sleep are important to keeping energy levels up during the day, improving mood and fighting off anxiety and depression” (Canada Border Services Agency, unpublished document on file with Human Rights Watch and Amnesty International, April 2021).

<sup>25</sup> Ibid.

<sup>26</sup> Ibid.

<sup>27</sup> Ibid. According to CBSA, “Detainees may request temporary supervised access to their personal cell phones and other electronic devices to retrieve contact information. However, for reasons related to safety, security and privacy rights of other detainees, at this time, the CBSA does not permit the regular use of personal electronic devices. However, the CBSA is reviewing this policy and will examine options related to the use of electronic devices that will take safety, security or privacy rights into consideration” (Canada Border Services Agency, unpublished document on file with Human Rights Watch and Amnesty International, April 2021).

<sup>28</sup> Ibid.

<sup>29</sup> Ibid.; Interview with “Michelle,” former immigration detainee (name withheld), Toronto, February 2021; Interview with “Marlon,” immigration detainee (name withheld), Laval, March 2021. Canada Border Services Agency describes isolation cells as “flexible living unit with rooms that may be used in circumstances where a detainee may require one-on-one observation, may request it, or where placement in other living units is not in their best interests or those of other detainees.” (Canada Border Services Agency, “Immigration holding centres,” [https://www.cbsa-asfc.gc.ca/security-securite/ihc-csi-eng.html#\\_s1](https://www.cbsa-asfc.gc.ca/security-securite/ihc-csi-eng.html#_s1)).

including maximum-security facilities.<sup>30</sup> Even in regions where an immigration holding center is in close proximity, CBSA may also hold immigration detainees in provincial jails if the agency determines that a detainee’s behavior “cannot be managed within an IHC [immigration holding center],”<sup>31</sup> or at the request of the nearest immigration holding center if it has reached capacity of 85 percent or above, or has other capacity problems.<sup>32</sup> Additionally, individuals with “mental health issues” may also be detained in a provincial jail in order to “effectively manage them in light of their behavior” or to facilitate “access to specialized care.”<sup>33</sup>

### *Decision to Continue or Terminate Detention*

After CBSA arrests and detains individuals, the agency retains jurisdiction to release immigration detainees from its custody within the first 48 hours after arrest.<sup>34</sup> At that point, the authority to release immigration detainees shifts to an administrative tribunal, the Immigration Division of the Immigration and Refugee Board (IRB). The IRB is an independent quasi-judicial body, and its Immigration Division conducts regularly scheduled detention review hearings to determine whether to order release or continued detention.<sup>35</sup>

The first detention review hearing takes place around 48 hours after initial arrest and if detention is ordered to continue, another hearing takes place within 7 days, and then every 30 days until release from detention or removal from the country.<sup>36</sup> Detention review hearings are adversarial proceedings involving two opposing parties: the immigration detainee, who may be represented by a lawyer, versus the minister of public safety and emergency preparedness, represented by CBSA hearings officers.<sup>37</sup> The latter bears the

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<sup>30</sup> Canada Border Services Agency, “ENF 20: Detention,”

<https://www.canada.ca/content/dam/ircc/migration/ircc/english/resources/manuals/enf/enf20-det-en.pdf>, section 7.

<sup>31</sup> Canada Border Services Agency, “Detentions,” December 10, 2020, <https://www.cbsa-asfc.gc.ca/security-secure/detent/menu-eng.html>, (accessed May 15, 2021).

<sup>32</sup> Canada Border Services Agency, “ENF 20: Detention,”

<https://www.canada.ca/content/dam/ircc/migration/ircc/english/resources/manuals/enf/enf20-det-en.pdf>, section 11.3.

<sup>33</sup> Interview with Canada Border Services Agency representatives, Toronto, Vancouver, Ottawa, February 1, 2021. See also Canada Border Services Agency, “Detentions,” <https://www.cbsa-asfc.gc.ca/security-secure/detent/menu-eng.html>.

<sup>34</sup> Immigration and Refugee Protection Act, sections 56-57.

<sup>35</sup> *Ibid.*

<sup>36</sup> *Ibid.*

<sup>37</sup> Hanna Gros and Yolanda Song, “‘No Life for a Child’: A Roadmap to End Immigration Detention of Children and Family Separation,” 2016, International Human Rights Program, University of Toronto’s Faculty of Law, [https://ihrp.law.utoronto.ca/utfl\\_file/count/PUBLICATIONS/Report-NoLifeForAChild.pdf](https://ihrp.law.utoronto.ca/utfl_file/count/PUBLICATIONS/Report-NoLifeForAChild.pdf) (accessed May 15, 2021), p. 34.

burden of proving that grounds for detention continue to exist on a balance of probabilities.<sup>38</sup>

The regularly scheduled detention review hearings are designed as a safeguard against arbitrary and indefinite detention. However, tribunal adjudicators are “not bound by any legal or technical rules of evidence,” and may base decisions on evidence that they consider “credible or trustworthy in the circumstances.”<sup>39</sup>

The tribunal is also limited in the scope of its review: it can only order continued detention or release from detention.<sup>40</sup> The tribunal may consider conditions and site of detention within its decisions but CBSA has full authority to decide where to hold immigration detainees.<sup>41</sup> The tribunal has no jurisdiction to order changes to conditions of detention and no jurisdiction to review the appropriateness of the site of detention.<sup>42</sup> Therefore, immigration detainees held on identical grounds may be subjected to significantly varied conditions of detention, ranging from immigration holding centers to maximum-security provincial jails.

## Immigration Detention in Numbers

Every year, Canada detains thousands of immigration detainees,<sup>43</sup> including refugee claimants, migrants in search of employment and a better life, and people who have lived in Canada since childhood as permanent residents. Between April 2016 and March 2020, Canada held about 32,000 immigration detainees.<sup>44</sup> The annual number of immigration detainees held has increased every fiscal year in this period, peaking at 8,825 in fiscal year 2019-2020.<sup>45</sup>

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<sup>38</sup> Immigration and Refugee Board of Canada, “Chairperson Guideline 2: Detention,” April 2021, <https://irb.gc.ca/en/legal-policy/policies/Pages/GuideDiro2.aspx> (accessed May 15, 2021), section 1.

<sup>39</sup> Immigration and Refugee Protection Act, section 173.

<sup>40</sup> *Brown v. Canada (Citizenship and Immigration)*, 2020 FCA 130. See also *Ebrahim Toure v. Minister of Public Safety*, 2017 ONSC 5878, at paras. 71-72.

<sup>41</sup> *Ibid.*

<sup>42</sup> *Ibid.*

<sup>43</sup> Canada Border Services Agency, “Annual Detention Statistics – 2012-2019,” August 20, 2019, <https://www.cbsa-asfc.gc.ca/security-securite/detent/stat-2012-2019-eng.html> (accessed May 15, 2021); Canada Border Services Agency, “Annual detention, fiscal year 2019 to 2020,” September 8, 2020, <https://www.cbsa-asfc.gc.ca/security-securite/detent/stat-2019-2020-eng.html> (accessed May 15, 2021).

<sup>44</sup> *Ibid.*

<sup>45</sup> *Ibid.*

## Number of Immigration Detainees Held in **Canada** Per Year

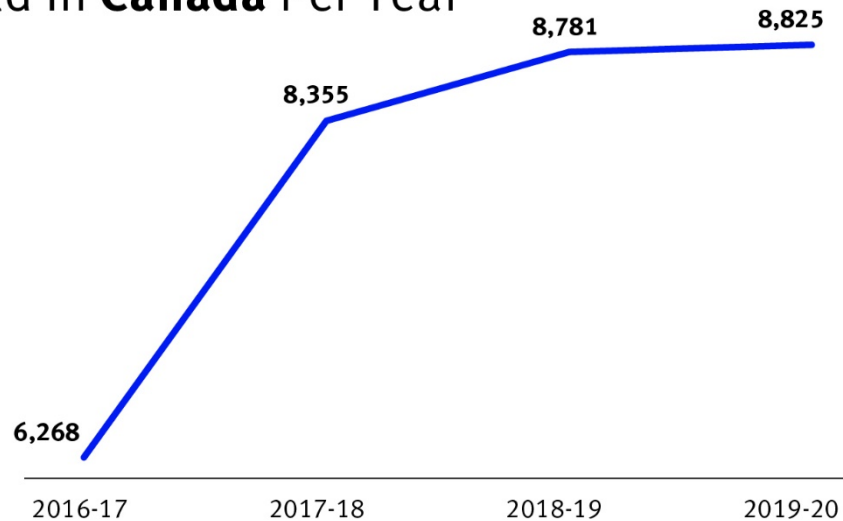


Figure 1: According to publicly available CBSA data, the total number of immigration detainees in Canada increased every year between 2016-17 and 2019-20.

Canada incarcerates children and adults alike in immigration detention. In fiscal year 2019-2020, authorities held 8,825 immigration detainees between the ages of 15 and 83, including 48 people aged 65 years and above.<sup>46</sup> In addition, children may be “housed” in detention facilities even if they are not under formal detention orders to accompany their detained parents, and they may also be separated from them.<sup>47</sup> In fiscal year 2019-2020, a total of 138 children were detained or “housed” in detention—including 73 under the age of 6—reflecting a 17 percent increase from the previous year.<sup>48</sup> CBSA does not collect data on how many children are separated from their parents in the course of detention.

<sup>46</sup> Canada Border Services Agency, “Detainee Population for Fiscal Year 2019-2020,” unpublished document on file with Human Rights Watch and Amnesty International.

<sup>47</sup> Human Rights Watch and the International Human Rights Program, University of Toronto’s Faculty of Law, *Joint Submission by Human Rights Watch and the University of Toronto’s International Human Rights Program to the Committee on the Rights of the Child’s Review of Canada’s fifth and sixth periodic review*, March 2020, [https://www.hrw.org/sites/default/files/supporting\\_resources/hrw\\_crc\\_submission\\_canada\\_final\\_1.pdf](https://www.hrw.org/sites/default/files/supporting_resources/hrw_crc_submission_canada_final_1.pdf).

<sup>48</sup> Canada Border Services Agency, “Annual detention, fiscal year 2019 to 2020,” <https://www.cbsa-asfc.gc.ca/security-secure/detent/stat-2019-2020-eng.html>.

## Proportion of Immigration Detainees in Canada by Ground of Detention, April 2016 – March 2020

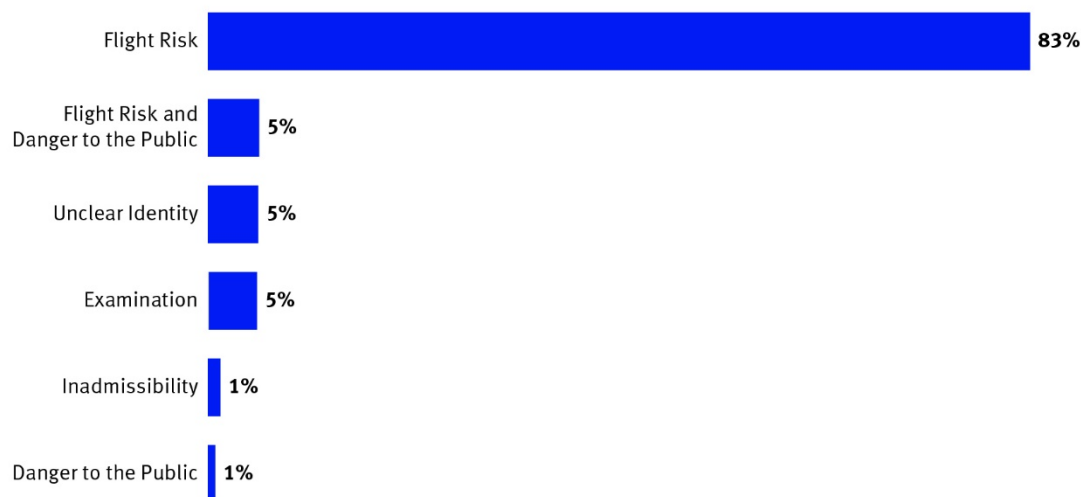


Figure 2: According to publicly available CBSA data, the vast majority of immigration detainees held between April 2016 and March 2020 were detained on the ground of flight risk.

The vast majority of immigration detainees are held for reasons unrelated to public safety concerns.<sup>49</sup> Between April 2016 and March 2020, approximately 94 percent of immigration detainees were held because authorities suspected that they were a flight risk, meaning they may not appear for a hearing or for removal from the country; because authorities were unsatisfied with their identity documents; or for the purpose of completing an examination of their status.<sup>50</sup> Among these grounds, flight risk was the most common: between 81 and 86 percent.<sup>51</sup> During this time period, a small minority of detainees—between 5 and 7 percent—were held in part because authorities claimed they posed a risk to public safety.<sup>52</sup> Approximately 1 percent of immigration detainees in this time period

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<sup>49</sup> Ibid; Canada Border Services Agency, “Annual Detention Statistics – 2012-2019,” <https://www.cbsa-asfc.gc.ca/security-secure/detent/stat-2012-2019-eng.html>.

<sup>50</sup> Ibid.

<sup>51</sup> Ibid.

<sup>52</sup> Ibid.

were held because authorities suspected them of being inadmissible to Canada.<sup>53</sup> None were held on the grounds of posing national security concerns.<sup>54</sup>

Immigration detainees held on the ground of flight risk not only represent the majority of those detained generally but also the majority of those detained in provincial jails.<sup>55</sup> Between April 2017 and March 2020, more than a fifth of immigration detainees—about 5,400<sup>56</sup>—were held in 78 provincial jails across Canada alongside criminally charged or convicted detainees.<sup>57</sup>

Immigration detainees who are held in provincial jails are not only confined in more restrictive settings than those held in immigration holding centers but they are also more likely to be detained for longer periods of time. Data obtained by researchers through access to information requests revealed that immigration detainees who were held for 90 days or longer in 2019 were more likely to be held in provincial jails than immigration holding centers.<sup>58</sup> That year, 78 percent of immigration detainees held for 90 days or longer spent at least part of their detention in a provincial jail.<sup>59</sup> This increased to 85 percent of detainees held for 180 days or longer, and all detainees who were held for 270 days or longer.<sup>60</sup>

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<sup>53</sup> Ibid.

<sup>54</sup> Ibid.

<sup>55</sup> Ibid.

<sup>56</sup> Ibid.

<sup>57</sup> Canada Border Services Agency, “Days Detained FY 2017-2018, 2018-2019 & 2019-2020 by Facility and Region,” unpublished document on file at Human Rights Watch and Amnesty International (accessed under Access to Information Act), undated.

<sup>58</sup> Canada Border Services Agency, untitled, document number 2019-21550, unpublished document on file at Human Rights Watch and Amnesty International (accessed under Access to Information Act), December 10, 2019.

<sup>59</sup> Ibid.

<sup>60</sup> Ibid.

## II. Immigration Detention and Mental Health

Many people developed mental health issues in jail.... Most of the time, I would just lie there and I would feel my mind drifting. Breathe circulated air. It's a place where you have to be very strong to avoid losing your mind and to stay the same person you were before.... When I put everything together—all the pressure and being away from my wife and kids—it was very hard to take. I just prayed.

– “Charles,” former immigration detainee incarcerated in Ontario provincial jails on two occasions in 2015 and 2020

Immigration detention can have a devastating impact on detainees' mental health. Every former immigration detainee interviewed for this report described the horrendous toll detention took on their well-being.

Researchers interviewed “John,” a man in his 30s, who left his country of birth in Africa as a child and spent several years in Canada after a failed refugee claim. CBSA detained him in an Ontario provincial jail for approximately a year as a flight risk. John spent more time in Canada than he had in his country of origin, and the government could not deport him because his country of origin did not recognize him as a citizen. John described feeling hopeless and had thoughts of suicide in detention:

A big thing about mental health is just having goals, having something to look forward to.... When there is nothing there, when it's open-ended, it becomes very difficult.... We didn't feel like we had any hope and we felt like something needed to change. We felt like we needed to do something drastic. A lot of people were ready to die.... I gave myself a time limit: that if I'm not released by a certain date, I'm going to find a way [to commit suicide].<sup>61</sup>

Human Rights Watch also interviewed “Daryan,” a man from Iraq who made a refugee claim upon arriving in Canada. He was arrested at the airport and detained in an

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<sup>61</sup> Interview with “John,” former immigration detainee (name withheld), Toronto, November 2020.

immigration holding centre for over a month. Daryan described witnessing the mental health crisis of his cellmate, another immigration detainee who was a refugee claimant: “He couldn’t accept the fact that he is in jail without a reason. That’s why he tried to commit suicide. He banged his head against the wall very hard and he passed out.... Then [CBSA] took him to the hospital in handcuffs.”<sup>62</sup>

Another former immigration detainee, Abdirahmaan Warssama, claimed refugee protection from Somalia in 1989 and received a ministerial permit to remain in Canada on humanitarian and compassionate grounds but did not obtain permanent residence. He was incarcerated as a flight risk for over five years in two maximum-security provincial jails from 2010 to 2015, while the government attempted to remove him to Somalia.<sup>63</sup> He was released from detention after 76 detention review hearings and a scathing Federal Court decision.<sup>64</sup> Following his release, Warssama sued the government for C\$55 million, stating he was subjected to “humiliating and degrading experiences” in detention, including being strip-searched, assaulted, robbed, denied warm clothing and health care, and forced to endure freezing temperatures, unsanitary living conditions, and lengthy lockdowns.<sup>65</sup> He described his time in immigration detention as “torture,” adding, “I am not who I was before [I was detained].”<sup>66</sup>

A Toronto-based lawyer who has worked with dozens of immigration detainees and represented some of Canada’s longest-held immigration detainees described the impact of detention on his clients: “It’s not subtle for people who are detained. It’s not like [they] have more social anxiety. [The impact of detention] really manifests itself in people shaking, screaming, not being able to sleep, not being able to function.”<sup>67</sup>

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<sup>62</sup> Interview with “Daryan,” former immigration detainee (name withheld), Toronto, September 2020.

<sup>63</sup> *Abdirahmaan Warssama v. The Minister of Citizenship and Immigration*, 2015 FC 1311.

<sup>64</sup> *Ibid.* The Federal Court decision describes the reason for Warssama’s detention: “Mr. Warssama has been held in jail for more than five years. Why? Because he will not sign a piece of paper! He does not wish to return to Somalia and will not sign a declaration that he will cooperate in his return.”

<sup>65</sup> Nicholas Keung, “Asylum-seeker sues federal government over ‘humiliating’ 5-year imprisonment,” *Toronto Star*, October 1, 2017, <https://www.thestar.com/news/immigration/2017/09/28/asylum-seeker-sues-federal-government-over-humiliating-5-year-imprisonment.html> (accessed May 15, 2021).

<sup>66</sup> Interview with Abdirahmaan Warssama, former immigration detainee, Toronto, August 2020. See also Tamara Khandaker, “This Man Was Jailed for Five Years Because Canada Couldn’t Deport Him,” *Vice*, January 14, 2016, <https://www.vice.com/en/article/9kjdep/this-man-was-jailed-for-five-years-because-canada-couldnt-deport-him> (accessed May 15, 2021); Nicholas Keung, “Asylum-seeker sues federal government over ‘humiliating’ 5-year imprisonment,” *Toronto Star*, October 1, 2017, <https://www.thestar.com/news/immigration/2017/09/28/asylum-seeker-sues-federal-government-over-humiliating-5-year-imprisonment.html> (accessed May 15, 2021).

<sup>67</sup> Interview with immigration and refugee lawyer (name withheld), Toronto, June 2020.



Another Toronto-based lawyer told researchers that some detainees whom his office has represented had mental health crises “to the point of being unable to communicate.”<sup>68</sup> Another lawyer similarly observed that some of his clients who were detained in provincial jails developed such severe symptoms of mental health conditions that they no longer appreciated the risks they might face upon deportation.<sup>69</sup>

A Vancouver-based lawyer described the case of her client, a single mother who was diagnosed with depression and post-traumatic stress and had endured severe domestic violence and abuse.<sup>70</sup> When she was detained as a flight risk, she was separated from her two children.<sup>71</sup> At her detention review hearing, she was asked to describe the impact 10 days in detention had on her:

Horrible. I am traumatized. They put me in segregation [for] four days. They [first] put me naked. They [then] put me [in] a strange dress because it [they] thinks I am going to kill myself because I am depressed a lot. I [was] crying a lot, a lot, a lot all time, all day, at night. I didn't sleep.... I don't eat. I don't drink. I lose weight.... I thinks I'm gonna die, like somebody tie my chest. I could not breathe. I stuck—my breath stuck inside my body. I rang [indiscernible] many, many times and bang so loud to ask help. I feel always faint and dizzy.<sup>72</sup>

According to Dr. Efrat Arbel, associate professor at the University of British Columbia Allard School of Law whose research focuses on the Canadian immigration detention system, “Without the ability to plan and look ahead, we unravel as human beings.”<sup>73</sup> In a 2018 academic paper, Arbel and co-author Ian Davis described “the problem of time” in immigration detention: “Detainees never know when—or if—their detention will end. Time in

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<sup>68</sup> Interview with immigration and refugee lawyer (name withheld), Toronto, June 2020.

<sup>69</sup> Interview with immigration and refugee lawyer (name withheld), Toronto, January 2021.

<sup>70</sup> Interview with immigration and refugee lawyer (name withheld), Vancouver, January 2021; Immigration and Refugee Board of Canada Immigration Division, Transcript of Proceedings, unpublished document on file with Human Rights Watch and Amnesty International, March 15, 2019.

<sup>71</sup> Ibid.

<sup>72</sup> Immigration and Refugee Board of Canada Immigration Division, Transcript of Proceedings, unpublished document on file with Human Rights Watch and Amnesty International, March 15, 2019.

<sup>73</sup> Interview with Dr. Efrat Arbel, associate professor at University of British Columbia Allard School of Law, Vancouver, October 2020. Arbel compared the indeterminacy of time in immigration detention to that in solitary confinement. See Efrat Arbel, “Devalued Liberty and Undue Deference: The Tort of False Imprisonment and the Law of Solitary Confinement,” *Supreme Court Law Review*, vol. 84 (2018).

detention is amorphous, never-ending, and ill-defined.”<sup>74</sup> Arbel said the uncertainties and open-endedness inherent in immigration detention in Canada are “all-consuming, ... traumatizing and re-traumatizing.”<sup>75</sup> A psychiatrist who worked with dozens of immigration detainees echoed Arbel’s view.<sup>76</sup>

According to Dr. Janet Cleveland, a McGill University psychologist and academic whose research focuses on the impact of immigration detention on mental health, many immigration detainees go through a process of mental health deterioration.<sup>77</sup> Cleveland’s research shows that even relatively brief periods of time in detention can cause post-traumatic stress, depression, and anxiety.<sup>78</sup>

Cleveland said the basic sense of control that people lose in detention is “fundamental to mental health.”<sup>79</sup> The rules, routines, and hostile settings within detention facilities take away immigration detainees’ control over even the most minute details of their daily lives. The sense of powerlessness and loss of control are common risk factors to developing depression and “once a person breaks, it can take a long time to get better even after release, and there can be long-term harm as well.”<sup>80</sup>

For those fleeing oppression and persecution, detention can be particularly traumatizing, sometimes leading to severe mental health deterioration.<sup>81</sup> One refugee lawyer based in Toronto observed that immigration detention is especially shocking to refugee claimants

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<sup>74</sup> Efrat Arbel and Ian Davis, “Immigration detention and the problem of time: lessons from solitary confinement,” *International Journal of Migration and Border studies*, vol. 4 (2018), p. 327.

<sup>75</sup> Interview with Dr. Efrat Arbel, associate professor at University of British Columbia Allard School of Law, Vancouver, October 2020.

<sup>76</sup> Interview with psychiatrist (name withheld), Toronto, June 2020.

<sup>77</sup> Interview with Dr. Janet Cleveland, psychologist and researcher at McGill University, Montreal, October 2020.

<sup>78</sup> Janet Cleveland and Cecile Rousseau, “Psychiatric symptoms associated with brief detention of adult asylum seekers in Canada,” *Canadian Journal of Psychiatry*, vol. 58 (2013), pp. 409–16. See also Branka Agic, Lisa Andermann, Kwame McKenzie, Andrew Tuck, “Refugees in Host Countries: Psychosocial Aspects and Mental Health,” in *An Uncertain Safety* (2018), pp. 187–211; Janet Cleveland, Rachel Kronick, Hanna Gros, Cecile Rousseau, “Symbolic violence and disempowerment as factors in the adverse impact of immigration detention on adult asylum seekers’ mental health,” *International Journal of Public Health*, vol. 63 (2018).

<sup>79</sup> Interview with Dr. Janet Cleveland, October 2020.

<sup>80</sup> *Ibid.*

<sup>81</sup> Interview with psychiatrist (name withheld), June 2020. See also Janet Cleveland and Cecile Rousseau, “Psychiatric symptoms associated with brief detention of adult asylum seekers in Canada,” *Canadian Journal of Psychiatry*, vol. 58 (2013), pp. 409–16; Branka Agic, Lisa Andermann, Kwame McKenzie, Andrew Tuck, “Refugees in Host Countries: Psychosocial Aspects and Mental Health,” in *An Uncertain Safety* (2018), pp. 187–211; Janet Cleveland, Rachel Kronick, Hanna Gros, Cecile Rousseau, “Symbolic violence and disempowerment as factors in the adverse impact of immigration detention on adult asylum seekers’ mental health,” *International Journal of Public Health*, vol. 63 (2018).

because it is “incongruous” with their idea of Canada as a welcoming country: “They associate detention with the same repressive regimes they are escaping.”<sup>82</sup> The same lawyer reported that some of her clients became so desperate in detention that they stopped pursuing existing legal avenues to stay in Canada because deportation was their only way out of detention.<sup>83</sup>

A 2018 external audit commissioned by the chair of the IRB recommended that authorities “address the enormous problem of affording fair and humane treatment to persons in detention who are living with mental illness.”<sup>84</sup> Despite recent changes in policy, including the IRB Chairperson’s Guideline on Detention and CBSA’s National Immigration Detention Framework,<sup>85</sup> immigration authorities have yet to address more significant and systemic issues within the immigration detention system, particularly for individuals with mental health conditions.<sup>86</sup> According to a lawyer with decades of experience representing immigration detainees, there continue to be “glaring failures of CBSA and the Immigration Division to properly account for mental health conditions when people are engaged with the enforcement machine.”<sup>87</sup>

Canada is a party to numerous international human rights conventions and is legally obligated to implement provisions protecting the rights of immigrants,<sup>88</sup> including the right

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<sup>82</sup> Interview with immigration and refugee lawyer (name withheld), Toronto, September 2020.

<sup>83</sup> Ibid.

<sup>84</sup> Immigration and Refugee Board of Canada, *Report of the 2017 / 2018 External Audit for Detention Reviews*, July 20, 2018, <https://irb-cisr.gc.ca/en/transparency/reviews-audit-evaluations/Pages/ID-external-audit-1718.aspx> (accessed May 15, 2021).

<sup>85</sup> Immigration and Refugee Board of Canada, “Chairperson Guideline 2: Detention,” <https://irb.gc.ca/en/legal-policy/policies/Pages/GuideDiro2.aspx>; Canada Border Services Agency, “National Immigration Detention Framework,” December 10, 2020, <https://www.cbsa-asfc.gc.ca/security-secureite/detent/nidf-cndi-eng.html> (accessed May 15, 2021). CBSA’s National Immigration Detention Framework lists mental health as one of its four pillars aiming to create a “better, fairer immigration detention system.”

<sup>86</sup> Interview with immigration and refugee lawyer (name withheld), Vancouver, November 2020.

<sup>87</sup> Interview with immigration and refugee lawyer (name withheld), Toronto, September 2020.

<sup>88</sup> Canada is a party to and thereby legally obligated to implement the 1951 Refugee Convention, the Convention on the Rights of Persons with Disabilities, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the Convention against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment, the Convention on the Elimination of All Forms of Discrimination against Women, the International Convention on the Elimination of All Forms of Racial Discrimination, and the Convention on the Rights of the Child. Canada is not a party to the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (CMW), the Optional Protocol of the Convention against Torture, or the American Convention of Human Rights. See UNHCR, “State parties, including reservations and declarations, to the 1951 Refugee Convention,” <https://www.unhcr.org/5d9ed32b4> (accessed May 15, 2021); United Nations Human Rights Treaty Bodies, “UN Treaty Body Database: Ratification Status for Canada,” [https://tbinternet.ohchr.org/\\_layouts/15/TreatyBodyExternal/Treaty.aspx?CountryID=31&Lang=EN](https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx?CountryID=31&Lang=EN) (accessed May 15, 2021); Organization of American States, “American Convention on Human Rights ‘Pact of San Jose, Costa Rica,’” [http://www.oas.org/dil/treaties\\_B-32\\_American\\_Convention\\_on\\_Human\\_Rights\\_sign.htm](http://www.oas.org/dil/treaties_B-32_American_Convention_on_Human_Rights_sign.htm) (accessed May 15, 2021).

to liberty and to be free from arbitrary detention.<sup>89</sup> Under international human rights standards, immigration detention may only occur if it is reasonable, necessary and proportionate to achieve a legitimate state interest and needs to take into account less invasive means of achieving the same end; as noted by the UN Working Group on Arbitrary Detention, immigration detention should be applied exceptionally, as a measure of last resort, if necessary to respond to a legitimate state interest.<sup>90</sup> The UN special rapporteur on torture has concluded that detention based solely on migration status exceeds the legitimate interests of the state and should be considered arbitrary.<sup>91</sup> The special rapporteur further noted that, in part because of its protracted or indefinite duration, such immigration detention inflicts serious psychological harm that can amount to prohibited ill-treatment.<sup>92</sup> According to the UN Working Group on Arbitrary Detention, immigration detention of “persons with disabilities ... must not take place,”<sup>93</sup> and “immigration detention should gradually be abolished.”<sup>94</sup>

## Failure to Recognize Psychosocial Disabilities and Provide Support

In many cases, CBSA officers and Immigration Division adjudicators fail to recognize symptoms of psychosocial disabilities among immigration detainees. Instead, according to five immigration and refugee lawyers from across the country, in the course of detention review hearings, authorities frequently frame behaviors of people with psychosocial

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<sup>89</sup> Article 9 of the International Covenant on Civil and Political Rights states: “Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.” See International Covenant on Civil and Political Rights (ICCPR), adopted December 16, 1966, G.A. Res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 52, UN Doc. A/6316 (1966), 999 U.N.T.S. 171, entered into force March 23, 1976, ratified by Canada May 19, 1976, art. 9. According to the Supreme Court of Canada, “At the heart of a free and democratic society is the liberty of its subjects. Liberty lost is never regained and can never be fully compensated for; therefore, where the potential exists for the loss of freedom for even a day, we, as a free and democratic society, must place the highest emphasis on ensuring that our system of justice minimizes the chances of an unwarranted denial of liberty” (*R v. Hall*, 2002 SCC 64, at para 47, cited in *Canada (Public Safety) v. Mohammed*, 2019 FC 451, at para. 17).

<sup>90</sup> UN Human Rights Committee, General Comment No. 35, Article 9 (Liberty and security of the person), UN Doc. CCPR/C/GC/35, December 16, 2014, para 18; UN Working Group on Arbitrary Detention, “Revised Deliberation No. 5 on deprivation of liberty of migrants,” February 7, 2018, [https://www.ohchr.org/Documents/Issues/Detention/RevisedDeliberation\\_AdvanceEditedVersion.pdf](https://www.ohchr.org/Documents/Issues/Detention/RevisedDeliberation_AdvanceEditedVersion.pdf) (accessed May 15, 2021), para. 12.

<sup>91</sup> UN Human Rights Council, “Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment,” (2018), UN Doc. A/HRC/37/50, para. 24.

<sup>92</sup> *Ibid.*, para. 26.

<sup>93</sup> UN Working Group on Arbitrary Detention, “Revised Deliberation No. 5 on deprivation of liberty of migrants,” February 7, 2018, [https://www.ohchr.org/Documents/Issues/Detention/RevisedDeliberation\\_AdvanceEditedVersion.pdf](https://www.ohchr.org/Documents/Issues/Detention/RevisedDeliberation_AdvanceEditedVersion.pdf) (accessed May 15, 2021), para. 41.

<sup>94</sup> UN Commission on Human Rights, Report of the Working Group on Arbitrary Detention, UN Doc. A/HRC/13/30, January 18, 2010, para. 58.

disabilities as amounting to non-cooperation and use it to justify continued detention.<sup>95</sup> One service provider described a case where her client was held in solitary confinement for several months, began to bang his head against the wall in frustration, refused to eat, and developed suicidal ideation.<sup>96</sup> In response, CBSA argued at his detention review hearing that he was being “uncooperative” and used this as further evidence to support his continued detention; the tribunal agreed and the man remained in detention.<sup>97</sup>

In some cases, the only way detainees can counter allegations that stem from mislabeled symptoms of psychosocial disabilities is by providing medical records and official diagnoses, which may lead to forced psychiatric assessments.

According to two lawyers, in some cases, without documentary evidence, authorities simply do not believe detainees have psychosocial disabilities.<sup>98</sup> In fact, according to a Montreal-based advocate, “Some CBSA officers and IHC [immigration holding center] guards view detainees’ [emotional] vulnerability as a manipulation strategy to obtain release, avert deportation, or access more rights.”<sup>99</sup>

Requiring medical records and official diagnoses is not only problematic because it may lead to forced psychiatric assessments but also because officials do not consistently ensure that detainees can access professionals who can conduct the required evaluations and provide documentation. According to lawyers across the country, it is exceedingly difficult and sometimes impossible to arrange for a psychiatric assessment for detainees, particularly if they are held in provincial jails, and authorities generally do not facilitate this process.<sup>100</sup> One psychiatrist described the various impediments to completing these psychiatric assessments: from lockdowns related to staffing shortages, to strict jail

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<sup>95</sup> Interviews with immigration and refugee lawyer (name withheld), Vancouver, November 2020, immigration and refugee lawyer (name withheld), Ottawa, November 2020, immigration and refugee lawyer (name withheld), Toronto, September 2020, immigration and refugee lawyer (name withheld), Nova Scotia, December 2020, and immigration and refugee lawyer (name withheld), Montreal, December 2020. See also Immigration and Refugee Board of Canada, *Report of the 2017 / 2018 External Audit for Detention Reviews*, <https://irb-cisr.gc.ca/en/transparency/reviews-audit-evaluations/Pages/ID-external-audit-1718.aspx>.

<sup>96</sup> Interview with designated representative (name withheld), Nova Scotia, December 2020.

<sup>97</sup> Ibid.

<sup>98</sup> Interviews with immigration and refugee lawyer (name withheld), Toronto, September 2020, and immigration and refugee lawyer (name withheld), Toronto, October 2020.

<sup>99</sup> Interview with service provider and advocate (name withheld), Montreal, October 2020.

<sup>100</sup> Interviews with immigration and refugee lawyer (name withheld), Toronto, December 2020, immigration and refugee lawyer (name withheld), Ottawa, November 2020, immigration and refugee lawyer (name withheld), Vancouver, November 2020, and designated representative (name withheld), Toronto, November 2020.

schedules, having to meet with detainees through Plexi glass and without privacy, and managing the logistics of accessing distant and remote provincial jails.<sup>101</sup> These conditions often make it exceedingly difficult to conduct a proper interview for the purpose of a psychiatric assessment.

Although detainees should be able to obtain voluntary psychiatric assessments, authorities should also give weight in detention-related decisions to non-medical observations by peers, service providers, and lawyers, and provide procedural accommodations to ensure detainees can participate in proceedings on an equal basis with others, as well as reasonable accommodations in other settings.

## Detainees Blocked from Making Independent Decisions

In cases where immigration detainees have an existing diagnosis or are suspected of having a mental health condition, the tribunal may determine that they are “unable ... to appreciate the nature of the proceedings.”<sup>102</sup> In such cases, the tribunal selects, appoints and pays a designated representative, typically from a roster of contracted individuals, to “stand in” for the detainee.<sup>103</sup> The tribunal’s explanatory Commentaries to the Immigration Division Rules on designated representatives refer to detainees who “cannot appreciate the nature of the proceedings” as “incompetent persons,” and notes that they “may have some ability to participate in making decisions, depending on the type of decision that has to be made and the nature and severity of their disorder or disability.”<sup>104</sup>

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<sup>101</sup> Interview with psychiatrist (name withheld), Toronto, June 2020.

<sup>102</sup> Immigration and Refugee Protection Act, section 167; Immigration Division Rules, section 18; Immigration and Refugee Board of Canada, “Chairperson Guideline 2: Detention,” <https://irb.gc.ca/en/legal-policy/policies/Pages/GuideDiro2.aspx>.

<sup>103</sup> Interview with Immigration and Refugee Board’s Immigration Division representatives, March 23, 2021. See also Immigration and Refugee Board of Canada, “Designated Representative’s Guide,” July 3, 2018, <https://irb-cisr.gc.ca/en/designated-representant/Pages/index.aspx> (accessed May 15, 2021); Immigration and Refugee Board of Canada, “Revised Remuneration Schedule for Designated Representatives,” June 27, 2018, <https://irb-cisr.gc.ca/en/news/2016/Pages/DesRepRem.aspx> (accessed May 15, 2021). According to the Designated Representative’s Guide, the requirements that designated representatives must meet in order to be appointed by the IRB include: “be 18 years of age or older; understand the nature of the proceedings before the IRB; be willing and able to act in the best interests of ... the person who is unable to appreciate the nature of the proceedings; and not have interests that conflict with those of the person you represent.”

<sup>104</sup> Immigration and Refugee Board of Canada, “Commentaries to the Immigration Division Rules: Rule 19 (Designated Representatives),” June 23, 2018, <https://irb.gc.ca/en/legal-policy/act-rules-regulations/pages/CommentIdSi.aspx> (accessed May 15, 2021).

Designated representatives have wide-ranging powers, such as:

- deciding whether to retain counsel and, if counsel is retained, instructing counsel or assisting the represented person in instructing counsel;
- making other decisions regarding their case or assisting them to make those decisions;
- and protecting their interests and putting forward the best possible case to the [tribunal].<sup>105</sup>

A 2018 external audit commissioned by the chair of the IRB found inconsistencies in the roles assigned to designated representatives at hearings.<sup>106</sup> In at least one hearing, the auditor observed that “the detained person was not allowed to make submissions on the basis that his DR [designated representative] was speaking for him.”<sup>107</sup>

The auditor described another case where an immigration detainee was incarcerated from 2012 to 2016 and experienced “a complete mental collapse after 16 months in detention” when his application for permanent residence was refused.<sup>108</sup> The auditor noted that, for the next three years in detention, the man “stopped talking and became unresponsive to any interaction,” and was diagnosed as catatonic.<sup>109</sup> During this period, detention review hearings proceeded every 30 days and the tribunal repeatedly characterized the detainee’s behavior as “non-cooperative,” finding that he was “obstructing the removal process in a very extreme way,” “not willing to attend [his hearings],” and had “chosen not to participate in this hearing.”<sup>110</sup> The tribunal appointed a designated representative, who attended 23 hearings but reported that he had been “unable to communicate at any point” with the detainee.<sup>111</sup> The auditor further observed:

At each hearing, the DR [designated representative] stated only that he had no alternative to detention to offer. The hearings are less than five minutes

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<sup>105</sup> Immigration and Refugee Board of Canada, “Designated Representative’s Guide,” <https://irb-cisr.gc.ca/en/designated-representant/Pages/index.aspx>.

<sup>106</sup> Immigration and Refugee Board of Canada, *Report of the 2017 / 2018 External Audit for Detention Reviews*, <https://irb-cisr.gc.ca/en/transparency/reviews-audit-evaluations/Pages/ID-external-audit-1718.aspx>.

<sup>107</sup> *Ibid.*

<sup>108</sup> *Ibid.*

<sup>109</sup> *Ibid.*

<sup>110</sup> *Ibid.*

<sup>111</sup> *Ibid.*

in length. At no point does the DR argue that the detained person is no longer a danger to the public or a flight risk because he is immobile, passive and non-verbal.

The presence of the DR seemed to give the ID [Immigration Division] Members the assurance that all was in order but meanwhile the detained person had never spoken to the DR and was being held in a catatonic state, off his medication and without proper treatment. The one time he was brought into the video room for a hearing, he seemed unaware of his surroundings and just put his head down on the table.<sup>112</sup>

The auditor recommended that the tribunal develop “tighter guidelines on the role and duties of DRs [Designated Representatives]” and that “a process should be introduced to monitor the quality of advocacy and support provided by DRs.”<sup>113</sup>

The designated representative system risks infringing on the right to due process and legal capacity—or the right to make one’s own decisions—of immigration detainees with mental health conditions. Rather than strictly providing support for individuals with mental health conditions to make decisions regarding their own legal matters, designated representatives are empowered to make decisions on their behalf.

International and regional human rights law expressly prohibits discrimination and requires states party to take steps to eliminate all forms of discrimination against individuals, including persons with disabilities.<sup>114</sup> Non-discrimination is also one of the

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<sup>112</sup> Ibid.

<sup>113</sup> Ibid. As of August 2020, the IRB’s progress report in response to the auditor’s recommendation indicated that the tribunal issued a new guideline that includes a section on designated representatives and is “taking a leadership role in the ongoing Designated Representative Program Review, which will address, among other issues, their roles and responsibilities.” See Immigration and Refugee Board of Canada, “Status Report on the Immigration Division’s implementation of the Management Action Plan in response to the Audit of long-term detention reviews,” August 7, 2020, <https://cirs-irb.gc.ca/en/hearings-reviews/Pages/response-action-plan.aspx?undefined&wbdisable=true> (accessed May 15, 2021).

<sup>114</sup> International Covenant on Economic, Social and Cultural Rights (ICESCR), adopted December 16, 1966, G.A. Res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 49, UN Doc. A/6316 (1966), 993 U.N.T.S. 3, entered into force January 3, 1976, ratified by Canada May 19, 1976, art. 2 (2); ICCPR, art. 2 (1); Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), adopted December 18, 1979, G.A. res. 34/180, 34 U.N. GAOR Supp. (No. 46) at 193, UN Doc. A/34/46, entered into force September 3, 1981, ratified by Canada December 10, 1981, art. 2; CRC, art. 2 (1); African [Banjul] Charter on Human and Peoples’ Rights (ACHPR), adopted June 27, 1981, OAU Doc. CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (1982), entered into force October 21, 1986, arts. 18 (4) and 28; American Convention on Human Rights (ACHR), adopted at the Inter-American Specialized Conference on Human Rights, San José, Costa Rica, 22 November 1966, art. 1.



cardinal principles on which the Convention on the Rights of Persons with Disabilities is grounded.<sup>115</sup> The CRPD states that “all persons are equal before and under the law and are entitled without discrimination to the equal protection and equal benefit of the law.”<sup>116</sup> The CRPD also obligates governments to take all appropriate steps to ensure that reasonable and procedural accommodation is provided.<sup>117</sup> This includes situations in which persons with disabilities have been deprived of their liberty in a prison or other legally mandated detention facility.<sup>118</sup> Article 14(1) of the CRPD states that “the existence of a disability shall in no case justify a deprivation of liberty.”<sup>119</sup> The UN Human Rights Committee has also stated that decisions regarding the detention of migrants must take into account its effect on mental health and make available adequate community-based services for persons with psychosocial disabilities.<sup>120</sup>

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<sup>115</sup> CRPD, art. 3 (b).

<sup>116</sup> *Ibid.*, art 5.

<sup>117</sup> *Ibid.*, arts. 5, 13. Under the International Principles and Guidelines on Access to Justice for Persons with Disabilities, procedural accommodation is defined as: “all necessary and appropriate modifications and adjustments in the context of access to justice, where needed in a particular case, to ensure the participation of persons with disabilities on an equal basis with others. Unlike reasonable accommodations, procedural accommodations are not limited by the concept of ‘disproportionate or undue burden.’” “International Principles and Guidelines on Access to Justice for Persons with Disabilities,” August 2020, [www.un.org/development/desa/disabilities/wp-content/uploads/sites/15/2020/10/Access-to-Justice-EN.pdf](http://www.un.org/development/desa/disabilities/wp-content/uploads/sites/15/2020/10/Access-to-Justice-EN.pdf) (accessed May 19, 2021), p.9. The Committee on the Rights of Persons with Disabilities stated that: “Persons with disabilities must also be granted legal capacity to testify on an equal basis with others. Article 12 of the Convention guarantees support in the exercise of legal capacity, including the capacity to testify in judicial, administrative and other legal proceedings. Such support could take various forms, including recognition of diverse communication methods, allowing video testimony in certain situations, procedural accommodation, the provision of professional sign language interpretation and other assistive methods. The judiciary must also be trained and made aware of their obligation to respect the legal capacity of persons with disabilities, including legal agency and standing.” Committee on the Rights of Persons with Disabilities, “Article 12: Equal recognition before the law,” General Comment No. 1, May 19, 2014, UN Doc. CRPD/C/GC/1, [www.undocs.org/en/CRPD/C/GC/1](http://www.undocs.org/en/CRPD/C/GC/1), (accessed May 19, 2021), para 39. According to the United Nations High Commissioner for Human Rights: “reasonable accommodation should not be confused with procedural accommodations in the context of access to justice, as this would fall short of the full provisions enshrined in the right. During the negotiations on the Convention, the term ‘reasonable’ was intentionally left aside in the framing of article 13. Article 13 requires ‘procedural accommodations’, which are not limited by the concept of ‘disproportionate or undue burden’. This differentiation is fundamental, because the right of access to justice acts as the guarantor for the effective enjoyment and exercise of all rights. Failure to provide a procedural accommodation therefore constitutes a form of discrimination on the basis of disability in connection with the right of access to justice.” Human Rights Council, “Equity and non-discrimination under article 5 of the Convention on the Rights of Persons with Disabilities: Report of the Office of the United Nations High Commissioner for Human Rights,” December 9, 2016, [www.undocs.org/A/HRC/34/26](http://www.undocs.org/A/HRC/34/26) (accessed May 19, 2021), para. 35. See also Human Rights Council, “Right to access to justice under article 13 of the Convention on the Rights of Persons with Disabilities: Report of the Office of the United Nations High Commissioner for Human Rights,” UN Doc. A/HRC/37/25, December 27, 2017, paras. 25-26).

<sup>118</sup> CRPD, art. 14 (2): “States Parties shall ensure that if persons with disabilities are deprived of their liberty through any process, they are, on an equal basis with others, entitled to guarantees in accordance with international human rights law and shall be treated in compliance with the objectives and principles of this Convention, including by provision of reasonable accommodation.”

<sup>119</sup> CRPD, art. 14 (1).

<sup>120</sup> UN Human Rights Committee, General Comment No. 35, Article 9 (Liberty and security of the person), UN Doc. CCPR/C/GC/35 (2014), paras 18–19.

Under the CRPD, people with disabilities have the right to recognition everywhere as persons before the law.<sup>121</sup> This means that they “enjoy legal capacity on an equal basis with others in all aspects of life.”<sup>122</sup> The CRPD rejects the presumption that persons with disabilities are unfit to exercise agency and makes it clear that the will and preferences of the person should be respected. The Committee on the Rights of Persons with Disabilities, an independent expert body created under the CRPD to oversee its implementation, clarified that a person’s mental capacity and ability to make decisions can vary depending on environmental or social factors. However, legal capacity is “a universal attribute inherent in all persons by virtue of their humanity” and people can therefore not be stripped of it.<sup>123</sup>

Article 12(3) of the CRPD requires states party to “take appropriate measures to provide access by persons with disabilities to the support they may require in exercising their legal capacity.”<sup>124</sup> In its interpretation of the treaty provisions, the CRPD committee stated: “At all times, including in crisis situations, the individual autonomy and capacity of persons with disabilities to make decisions must be respected.”<sup>125</sup> To ensure this, the CRPD obligates governments to provide support to people to exercise their legal capacity, through a system known as “supported decision-making.”<sup>126</sup> Importantly, the committee makes clear that “support in the exercise of legal capacity ... should never amount to substitute decision making.”<sup>127</sup>

Canada ratified the CRPD but made a reservation and interpretative declaration to Article 12:

Canada recognizes that persons with disabilities are presumed to have legal capacity on an equal basis with others in all aspects of their lives.  
Canada declares its understanding that Article 12 permits supported and

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<sup>121</sup> CRPD, art. 12.

<sup>122</sup> *Ibid.*

<sup>123</sup> CRPD Committee, General comment No. 1, Article 12: Equal recognition before the law, UN Doc. CRPD/C/GC/1 (2014), para. 8.

<sup>124</sup> CRPD, art. 12 (3).

<sup>125</sup> CRPD Committee, General comment No. 1, Article 12: Equal recognition before the law, UN Doc. CRPD/C/GC/1 (2014), para. 18.

<sup>126</sup> *Ibid.*, para. 26.

<sup>127</sup> CRPD Committee, General comment No. 1, Article 12: Equal recognition before the law, UN Doc. CRPD/C/GC/1 (2014), para. 17.

substitute decision-making arrangements in appropriate circumstances and in accordance with the law.

To the extent Article 12 may be interpreted as requiring the elimination of all substitute decision-making arrangements, Canada reserves the right to continue their use in appropriate circumstances and subject to appropriate and effective safeguards.<sup>128</sup>

According to several legal scholars, given the CRPD’s mandate of “affirming maximum independence, equality, and participation of persons with disabilities in society,” Canada’s reservation on the legal capacity of persons with psychosocial disabilities “severely interferes with the Convention’s object and purpose.”<sup>129</sup>

Detention review hearings in which detainees with mental health conditions cannot meaningfully participate should not proceed by simply appointing a designated representative to “stand in”<sup>130</sup> for them and make substitute decisions. Such proceedings are in violation of detainees’ rights as they infringe on their right to due process and legal capacity. Canada’s failure to provide procedural accommodations to immigration detainees with disabilities violates the CRPD.<sup>131</sup> In cases where detainees with mental health conditions cannot exercise their legal capacity through supported decision making and access hearings with due process, they should be released from detention and provided with the support they require outside of detention. As noted above, according to the UN Working Group on Arbitrary Detention, immigration detention of “persons with disabilities ... must not take place.”<sup>132</sup>

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<sup>128</sup> United Nations Treaty Series, “15. Convention on the Rights of Persons with Disabilities,” vol. 2515, <https://treaties.un.org/doc/Publication/MTDSG/Volume%20I/Chapter%20IV/IV-15.en.pdf>, (accessed May 15, 2021), p. 4.

<sup>129</sup> Hoffman, Steven J., Lathika Sritharan, and Ali Tejpar, “Is the UN Convention on the Rights of Persons with Disabilities Impacting Mental Health Laws and Policies in High-Income Countries? A Case Study of Implementation in Canada,” *BMC International Health and Human Rights*, vol. 16 (2016), [www.bmcinthealthhumrights.biomedcentral.com/articles/10.1186/s12914-016-0103-1](http://www.bmcinthealthhumrights.biomedcentral.com/articles/10.1186/s12914-016-0103-1) (accessed May 15, 2021), p. 9.

<sup>130</sup> Interview with Immigration and Refugee Board’s Immigration Division representatives, March 23, 2021. See also Immigration and Refugee Board of Canada, “Designated Representative’s Guide,” <https://irb-cisr.gc.ca/en/designated-representant/Pages/index.aspx>.

<sup>131</sup> CRPD, art. 13.

<sup>132</sup> UN Working Group on Arbitrary Detention, “Revised Deliberation No. 5 on deprivation of liberty of migrants,” [https://www.ohchr.org/Documents/Issues/Detention/RevisedDeliberation\\_AdvanceEditedVersion.pdf](https://www.ohchr.org/Documents/Issues/Detention/RevisedDeliberation_AdvanceEditedVersion.pdf), para. 41.

People interviewed for this report also described the designated representative program as ambiguous and ineffective. One designated representative noted that she has been “confronted with ethical boundaries and the lack of limitations on the scope of [her] role as a designated representative.”<sup>133</sup> Another designated representative observed: “It doesn’t feel like there is a good answer anywhere for people with mental health conditions in detention.... Sometimes it’s hard to know how to be helpful.”<sup>134</sup> Two lawyers and an advocate echoed concerns about the ineffectiveness of the designated representative system as well.<sup>135</sup>

The broad scope of designated representatives’ responsibilities also makes it difficult for them to explain their role to detainees. One designated representative reported that some detainees believe she is part of the government and this makes it challenging to build trust and rapport.<sup>136</sup> In cases where detainees are held in provincial jails, designated representatives face added challenges in connecting with them over the phone because they rely on guards to facilitate calls.<sup>137</sup> One designated representative observed: “It’s virtually impossible for [detainees] to know who I am and how I can help. I’m just one more voice on the phone.”<sup>138</sup>

Despite their immense responsibilities, designated representatives receive no meaningful training or support. One designated representative reported that she was “shocked and horrified at the training [she] received.”<sup>139</sup> The training lasted about one to two hours, covered the “basics of the law,” provided limited information about community resources, and did not cover any material about mental health conditions.<sup>140</sup> In particular, the training had “nothing substantial on how to work with people with serious mental health [conditions]” or “what it means to act in their best interests when given direction contrary to what you believe their best interests to be.”<sup>141</sup>

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<sup>133</sup> Interview with designated representative (name withheld), Nova Scotia, December 2020.

<sup>134</sup> Interview with designated representative (name withheld), Toronto, November 2020.

<sup>135</sup> Interviews with immigration and refugee lawyer (name withheld), Vancouver, November 2020, immigration and refugee lawyer (name withheld), Montreal, January 2021, immigration consultant and activist (name withheld), Toronto, June 2020.

<sup>136</sup> Interview with designated representative (name withheld), Toronto, November 2020.

<sup>137</sup> Ibid.

<sup>138</sup> Ibid.

<sup>139</sup> Ibid.

<sup>140</sup> Ibid.

<sup>141</sup> Ibid.

## Authorities Respond to Disabilities with Coercive Measures

We don't belong in jail.... We don't deserve to live like that. They should let us be free and at least let us come out for fresh air so we can feel like humans.... I started taking anti-depressants in detention and I still take it sometimes. It makes me feel numb.

– “Ken,” former immigration detainee incarcerated in an Ontario provincial jail from 2013 to 2017

Several lawyers told researchers that in their experience, where immigration authorities recognize that detainees have a psychosocial disability, they often view it as a risk factor and respond with coercive measures.<sup>142</sup> CBSA's Enforcement Manual instructs officers that, “instability” of a person with “mental imbalance” during a CBSA interview “may be an important indicator in the assessment of the danger, and may point to future violent behavior.”<sup>143</sup>

This amounts to discrimination against persons with psychosocial disabilities. According to the UN Office of the High Commissioner for Human Rights, the jurisprudence of the CRPD committee makes clear that having a perceived or actual disability can never be used as a basis to deprive a person of liberty: “It is contrary to article 14 to allow for the detention of persons with disabilities based on the perceived danger of persons to themselves or to others. The involuntary detention of persons with disabilities based on presumptions of risk or dangerousness tied to disability labels is contrary to the right to liberty.”<sup>144</sup>

According to seven lawyers interviewed for this report, CBSA officials have used detainees' psychosocial disabilities against them in their legal proceedings, arguing that their conditions make them “unreliable,” “deceptive,” “untrustworthy,” “uncontrollable,” or

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<sup>142</sup> Interviews with immigration and refugee lawyer (name withheld), Vancouver, November 2020, immigration and refugee lawyer (name withheld), Toronto, September 2020, immigration and refugee lawyer (name withheld), Vancouver, November 2020, immigration and refugee lawyer (name withheld), Toronto, October 2020, immigration and refugee lawyer (name withheld), Toronto, June 2020, immigration and refugee lawyer (name withheld), Toronto, June 2020, immigration and refugee lawyer (name withheld), Toronto, September 2020, and immigration and refugee lawyer (name withheld), Toronto, January 2021.

<sup>143</sup> Canada Border Services Agency, “ENF 20: Detention,”

<https://www.canada.ca/content/dam/ircc/migration/ircc/english/resources/manuals/enf/enf20-det-en.pdf>, section 6.4.

<sup>144</sup> Office of the UN High Commissioner for Human Rights, “Statement on article 14 of the Convention on the Rights of Persons with Disabilities,” Geneva, September 2014,

<http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=15183&LangID=E#sthash.LaofxCOB.dpuf>.

“unable to comply.”<sup>145</sup> In some cases, lawyers said, CBSA officials have also argued that detainees with mental health conditions constitute a flight risk because they cannot be relied upon to appear for removal or an immigration proceeding.<sup>146</sup> One Toronto-based lawyer reported a case where her client was detained because the tribunal concluded that she would be “better off [in detention]” because “she’s clearly unwell and she won’t be able to comply with conditions of release.”<sup>147</sup>

According to five lawyers and one advocate representing clients in detention across Canada, in cases where detainees exhibit or report symptoms of suicidality, CBSA officials have argued in detention review hearings that this is a reason to keep them detained where they could be prevented from harming themselves or committing suicide.<sup>148</sup> One lawyer reported: “I advise my clients to avoid telling CBSA they have suicidal ideation because I fear it can be used against them.”<sup>149</sup>

CBSA not only uses detainees’ mental health deterioration to argue for continued detention but also to justify arrest in the first place. One advocate who has provided support services to immigration detainees for over 15 years noted that when people are served with a deportation date in the course of a meeting with CBSA, the officers may ask whether they feel anxious or depressed about deportation; the advocate reported that some people have been detained and placed on suicide watch simply because they expressed panic and fear of being deported.<sup>150</sup> Accordingly, “a mental health crisis – precipitated by learning of a removal date – [can be] used to justify detention,” the advocate said.<sup>151</sup>

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<sup>145</sup> Interviews with immigration and refugee lawyer (name withheld), Vancouver, November 2020, immigration and refugee lawyer (name withheld), Toronto, September 2020, immigration and refugee lawyer (name withheld), Vancouver, November 2020, immigration and refugee lawyer (name withheld), Toronto, October 2020, immigration and refugee lawyer (name withheld), Toronto, June 2020, immigration and refugee lawyer (name withheld), Toronto, June 2020, and immigration and refugee lawyer (name withheld), Toronto, September 2020.

<sup>146</sup> Interviews with immigration and refugee lawyer (name withheld), Toronto, June 2020, immigration and refugee lawyer (name withheld), Toronto, September 2020, and immigration consultant and activist (name withheld), Toronto, June 2020.

<sup>147</sup> Interview with immigration and refugee lawyer (name withheld), Toronto, January 2021.

<sup>148</sup> Interviews with immigration and refugee lawyer (name withheld), Toronto, December 2020, immigration and refugee lawyer (name withheld), Montreal, December 2020, service provider and advocate (name withheld), Montreal, October 2020, immigration and refugee lawyer (name withheld), Ottawa, November 2020, immigration and refugee lawyer (name withheld), Vancouver, November 2020, and immigration and refugee lawyer (name withheld), Toronto, September 2020.

<sup>149</sup> Interview with immigration and refugee lawyer (name withheld), Toronto, December 2020.

<sup>150</sup> Interview with service provider and advocate (name withheld), Montreal, October 2020.

<sup>151</sup> Ibid.

## *Placement in Provincial Jails Rather than Immigration Holding Centers*

I was just waiting and praying, trying to convince myself that it's not that bad. I was thinking, "They can't just leave me in here." ... I didn't feel like a human in there: I felt like a dog. The guards would just open the latch to feed me.

– "Joseph," former immigration detainee held in an Ontario jail in 2020

In a February 2021 interview with Human Rights Watch and Amnesty International researchers, CBSA officials indicated that individuals with mental health conditions may be detained in a provincial jail in order to "effectively manage them in light of their behavior" or to facilitate "access to specialized care."<sup>152</sup> However, mental health treatment in provincial jails is woefully inadequate and has been the subject of recent reports by Ontario's Expert Advisory Committee on Health Care Transformation in Corrections, the independent advisor on corrections reform, and the Ontario Human Rights Commission.<sup>153</sup> A 2019 report by the auditor general of Ontario found that, "Correctional institutions are

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<sup>152</sup> Interview with Canada Border Services Agency representatives, Toronto, Vancouver, Ottawa, February 1, 2021. See also Canada Border Services Agency, "Detentions," <https://www.cbsa-asfc.gc.ca/security-securite/detet/menu-eng.html>. In response to researchers' follow-up inquiries regarding measures CBSA takes in cases where immigration detainees self-harm or have suicidal ideation, CBSA representatives indicated in part: "In regions with access to an IHC, every attempt is made to manage vulnerable persons with mental illness within the facility; however detention within provincial facilities are utilized where the needs or behaviours of the detainee cannot adequately be managed within an IHC or in regions where no IHC exists" (Canada Border Services Agency, unpublished document on file with Human Rights Watch and Amnesty International, April 2021).

<sup>153</sup> Ontario's Expert Advisory Committee on Health Care Transformation in Corrections, "Transforming Health Care in Our Provincial Prisons," 2018 (partially redacted), <https://johnhoward.on.ca/wp-content/uploads/2019/05/Transforming-Health-Care-in-Our-Provincial-Prisons-External-Advisory-Report-2.pdf> (accessed May 15, 2021); Ontario Ministry of the Solicitor General, "Corrections in Ontario: Directions for Reform – Independent Review of Ontario Corrections," September 2017, <https://www.mcscs.jus.gov.on.ca/english/Corrections/IndependentReviewOntarioCorrections/IndependentReviewOntarioCorrectionsDirectionsReform.html> (accessed May 15, 2021); Ontario Ministry of the Solicitor General, "Segregation in Ontario: Independent Review of Ontario Corrections," March 2017, <https://www.mcscs.jus.gov.on.ca/english/Corrections/IndependentReviewOntarioCorrections/IndependentReviewOntarioCorrectionsSegregationOntario.html#mhandseg> (accessed May 15, 2021); Ontario Human Rights Commission, "Report on conditions of confinement at Toronto South Detention Centre," undated, <http://www.ohrc.on.ca/en/report-conditions-confinement-toronto-south-detention-centre> (accessed May 15, 2021). See also Ontario Ministry of Solicitor General, "Final Report of the Independent Reviewer on the Ontario Ministry of the Solicitor General's Compliance with the 2013 'Jahn Settlement Agreement' and the Terms of the Consent Order of January 16, 2018 Issued by the Human Rights Tribunal of Ontario," February 25, 2020, [www.mcscs.jus.gov.on.ca/english/Corrections/JahnSettlement/FinalReportIndependentReviewer.html#background](http://www.mcscs.jus.gov.on.ca/english/Corrections/JahnSettlement/FinalReportIndependentReviewer.html#background) (accessed May 15, 2021).

not suited to provide appropriate care to the growing percentage of inmates who have possible mental health issues.”<sup>154</sup>

The Ontario Superior Court has also been critical of the treatment of immigration detainees in provincial jails. In the case of Ebrahim Toure, a man who had a psychosocial disability and was held as a flight risk for over five years from 2013 to 2018, the court found that detention amounted to “cruel and unusual treatment” in breach of the Canadian Charter of Rights and Freedoms and that the case demonstrated “an inexcusable institutional dereliction of responsibility of the federal authorities to protect the interests of those in its care and control.”<sup>155</sup> In the case of Kashif Ali, a man detained for over seven years from 2010 to 2017, the court found that the unavailability of treatment in provincial jail was one of the factors that rendered his detention unlawful: “There is evidence of health concerns that have developed with respect to Mr. Ali, both physical and mental, that will not be properly addressed as long as Mr. Ali remains in a provincial detention facility.”<sup>156</sup>

Three lawyers observed that many of their clients in provincial jail tend to develop severe symptoms of psychosocial disabilities.<sup>157</sup> One lawyer said: “Jail is not the place to go to get mental health treatment.”<sup>158</sup> Another observed: “Jail is not a good place to be for someone who is actively suicidal.”<sup>159</sup> Many detainees in provincial jail develop anxiety, depression, insomnia, become hopeless, and have suicidal thoughts.<sup>160</sup>

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<sup>154</sup> Office of the Auditor General of Ontario, “Annual Report 2019: Reports on Correctional Services and Court Operations,” 2019, [https://www.auditor.on.ca/en/content/annualreports/arreports/en19/2019AR\\_v3\\_en\\_web.pdf](https://www.auditor.on.ca/en/content/annualreports/arreports/en19/2019AR_v3_en_web.pdf) (accessed May 15, 2021), p. 18.

<sup>155</sup> *Ebrahim Toure v. Minister of Public Safety*, 2017 ONSC 5878, at paras 76 and 90. See also Hanna Gros (Human Rights Watch) and Justin Mohammed, “‘No Justice, No Truth’ for Canada’s Immigration Detainees,” commentary, *The Hill Times*, December 10, 2020, [www.hrw.org/news/2020/12/10/no-justice-no-truth-canadas-immigration-detainees](http://www.hrw.org/news/2020/12/10/no-justice-no-truth-canadas-immigration-detainees). In 2019, the UN Working Group on Arbitrary Detention determined that Toure’s detention was arbitrary and violated international law. The working group urged Canada to conduct a “full and independent investigation,” but the government has not complied. See UN Working Group on Arbitrary Detention, “Opinions adopted by the Working Group on Arbitrary Detention at its eighty-fourth session, 23 April – 3 May 2019 – Opinion No. 7/2019 concerning Ebrahim Toure (Canada),” June 7, 2019, [https://www.ohchr.org/Documents/Issues/Detention/Opinions/Session84/A\\_HRC\\_WGAD\\_2019\\_7.pdf](https://www.ohchr.org/Documents/Issues/Detention/Opinions/Session84/A_HRC_WGAD_2019_7.pdf) (accessed June 8, 2021).

<sup>156</sup> *Ali v. Canada (Attorney General)*, 2017 ONSC 2660, at para 39.

<sup>157</sup> Interviews with immigration and refugee lawyer (name withheld), Toronto, October 2020, immigration and refugee lawyer (name withheld), Toronto, June 2020, and immigration and refugee lawyer (name withheld), Montreal, January 2021.

<sup>158</sup> Interview with immigration and refugee lawyer (name withheld), Toronto, October 2020.

<sup>159</sup> Interview with immigration and refugee lawyer (name withheld), Toronto, June 2020.

<sup>160</sup> Interviews with immigration and refugee lawyer (name withheld), Toronto, October 2020, and immigration and refugee lawyer (name withheld), Toronto, June 2020.



CBSA's enforcement manual indicates that even if a healthcare professional recommends against transferring a detainee to provincial jail because of a medical condition, immigration holding center managers (who are CBSA officials) retain final authority to make decisions regarding placements.<sup>161</sup> Two designated representatives based in Toronto reported that, upon inquiring why their clients were in a provincial jail rather than the immigration holding center, CBSA officials replied that the immigration holding center (which is run by CBSA) had refused to admit them because of their mental health conditions.<sup>162</sup> A Toronto-based lawyer also observed that some of his clients who expressed suicidal thoughts upon arrest were taken directly to provincial jail and clients who were initially held at the immigration holding center and expressed suicidal thoughts were also transferred to provincial jails "under the pretense of mental health support being superior at the jail."<sup>163</sup> A Montreal-based lawyer similarly observed that immigration detainees who express suicidal ideation are transferred from the immigration holding center to a provincial jail.<sup>164</sup>

According to CBSA, the agency has "limited control over detention conditions" in provincial jails, which "poses challenges in ensuring a common standard of care."<sup>165</sup> In response to researchers' inquiry as to whether CBSA retains responsibility for the health, safety and well-being of immigration detainees in provincial jails, agency representatives indicated: "Through agreements with Provincial Correctional Authorities, detainees are to have access to routine or emergency medical care while detained in a [provincial jail]."<sup>166</sup>

According to the UN Working Group on Arbitrary Detention, immigration detention "must not take place in facilities such as police stations, remand institutions, prisons and other facilities since these are designed for those within the realm of the criminal justice

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<sup>161</sup> Canada Border Services Agency, "ENF 20: Detention," <https://www.canada.ca/content/dam/ircc/migration/ircc/english/resources/manuals/enf/enf20-det-en.pdf>, section 9.5.

<sup>162</sup> Interviews with designated representative (name withheld), Toronto, November 2020, and designated representative (name withheld), Toronto, November 2020.

<sup>163</sup> Interview with immigration and refugee lawyer (name withheld), Toronto, June 2020.

<sup>164</sup> Interview with immigration and refugee lawyer (name withheld), Montreal, January 2021.

<sup>165</sup> Canada Border Services Agency, "2020-21 Departmental Plan," 2020, <https://www.cbsa-asfc.gc.ca/agency-agence/reports-rapports/rpp/2020-2021/report-rapport-eng.pdf> (accessed May 15, 2021).

<sup>166</sup> Canada Border Services Agency, unpublished document on file with Human Rights Watch and Amnesty International, April 2021. The agency further indicated in its response: "Through improved operational standards, the national detention program aligns with key international detention standards including United Nations High Commissioner for Refugees (UNHCR) and Canadian Red Cross (CRC) guidelines. Frequent engagement with PCF [provincial correctional facility] partners and detainees by CBSA officials seeks to ensure detainees have appropriate access to detention in a manner that supports the health, safety and well-being of detainees in PCFs [provincial correctional facilities]."

system.”<sup>167</sup> The working group also noted: “The mixing of migrant and other detainees who are held under the remit of the criminal justice system must not take place.”<sup>168</sup> The group has emphasized that immigration detention “must not be punitive in nature” and “[m]igrants must not be qualified or treated as criminals, or viewed only from the perspective of national or public security and/or health.”<sup>169</sup>

### *Over-Medication and Lack of Mental Health Support*

They [jail medical staff] give us sleepers [anti-depressants] just to make us into zombies. Your mind has to be sharp in there.... You have to figure out a way just to avoid becoming like a zombie. They are just eager to give us sleepers instead of listening to our problems.<sup>170</sup>

– “Joseph,” former immigration detainee held in an Ontario provincial jail in 2020

According to a psychiatrist who has worked with dozens of immigration detainees and people formerly incarcerated on criminal grounds, healthcare services in provincial jails are generally limited to pharmacological support provided by doctors; psychotherapeutic and other mental health or emotional support is rare.<sup>171</sup> One former detainee observed: “They would rather provide you with [drugs] than get you counselling or talk about what’s really happening with you and why you feel this way.”<sup>172</sup> According to three former detainees and two lawyers, instead of tailoring prescriptions to detainees’ needs, provincial jail doctors often simply prescribe them anti-depressants.<sup>173</sup>

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<sup>167</sup> UN Working Group on Arbitrary Detention, “Revised Deliberation No. 5 on deprivation of liberty of migrants,” [https://www.ohchr.org/Documents/Issues/Detention/RevisedDeliberation\\_AdvanceEditedVersion.pdf](https://www.ohchr.org/Documents/Issues/Detention/RevisedDeliberation_AdvanceEditedVersion.pdf), para. 44. See also UN Human Rights Committee, General Comment No. 35, Article 9 (Liberty and security of the person), UN Doc. CCPR/C/GC/35 (2014), para. 18.

<sup>168</sup> *Ibid.* In response to researchers’ inquiry as to whether immigration detainees in provincial jails are co-mingled with criminally charged and convicted individuals, CBSA representatives indicated in part: “[T]hrough ongoing discussions with provincial partners, we will continue to advocate for a reduction in co-mingling through the use of dedicated space. The CBSA continues to negotiate agreements with provinces, which include provisions to minimize co-mingling and solitary confinement to the greatest extent possible. Institutions in BC [British Columbia] and Ontario have offered dedicated space for immigration detainees where there are sufficient volumes and facility capacities to do so” (Canada Border Services Agency, unpublished document on file with Human Rights Watch and Amnesty International, April 2021).

<sup>169</sup> *Ibid.*, paras 10 and 14.

<sup>170</sup> Interview with “Joseph,” former immigration detainee (name withheld), Toronto, December 2020.

<sup>171</sup> Interview with psychiatrist (name withheld), Toronto, June 2020.

<sup>172</sup> Interview with “Usman,” former immigration detainee (name withheld), Toronto, October 2020.

<sup>173</sup> *Ibid.*; Interviews with “Joseph,” former immigration detainee (name withheld), Toronto, December 2020, “John,” former immigration detainee (name withheld), Toronto, November 2020, immigration and refugee lawyer (name withheld), Toronto, October 2020, and immigration and refugee lawyer (name withheld), Toronto, December 2020.

“Joseph,” a man from an African country who arrived in Canada as a high school student on a student visa and extended it once he enrolled in university, shared his experience with researchers.<sup>174</sup> He said he dropped out of university when he could no longer afford to pay tuition fees and his student visa expired several months after the onset of the Covid-19 pandemic. When he was detained, he had been living in Canada for about seven years and his Canadian wife was finalizing his spousal sponsorship. He reported that, while he was detained in a maximum-security provincial jail in Ontario, he asked the jail doctor for NyQuil (cold and flu relief medication) to help him with insomnia. “Sleep is one of the best things [to cope with] jail—sleep is the only way you can get to the next day,” he told researchers. “If I couldn’t sleep, I had to be awake with my thoughts.”<sup>175</sup> The provincial jail doctor prescribed him Trazodone, an anti-depressant, without explaining to him what it was for and what the potential side effects might be.<sup>176</sup> Joseph assumed it was a sleeping pill. He did not have another appointment with the doctor and only learned the drug was an anti-depressant after he was released from detention.<sup>177</sup>

Another former detainee who was held in an Ontario provincial jail for over three years reported that he refused to take anti-depressants that jail doctors prescribed for fear that he would become dependent on them: “My only outlet was Indigenous healing sessions: that helped me cope. There was no other option.”<sup>178</sup>

An Ontario-based lawyer and advocate observed that immigration detainees who are held in provincial jails are frequently over-medicated to make them more “lucid and calm” but the underlying circumstances that cause distress and trigger symptoms of mental health conditions are ignored.<sup>179</sup>

In 2016, the chief commissioner of the Ontario Human Rights Commission expressed concern that “the services provided to [immigration detainees in Ontario provincial jails] are not consistent with the Ministry of Community Safety and Correctional Services’ (MCSCS) obligations under the [Ontario Human Rights] Code.”<sup>180</sup> In particular, the

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<sup>174</sup> Interview with “Joseph,” former immigration detainee (name withheld), Toronto, December 2020.

<sup>175</sup> Ibid.

<sup>176</sup> Ibid.

<sup>177</sup> Ibid.

<sup>178</sup> Interview with “Usman,” former immigration detainee (name withheld), Toronto, October 2020.

<sup>179</sup> Interview with immigration and refugee lawyer (name withheld), Toronto, October 2020.

<sup>180</sup> Renu Mandhane, “OHRC calls for reforms to immigrant detention system,” April 11, 2016, [http://www.ohrc.on.ca/en/news\\_centre/ohrc-calls-reforms-immigrant-detention-system](http://www.ohrc.on.ca/en/news_centre/ohrc-calls-reforms-immigrant-detention-system) (accessed May 15, 2021).

commissioner noted that immigration detainees in Ontario provincial jails “do not have access to adequate or tailored mental health treatment or support.”<sup>181</sup>

According to a psychologist and academic whose research focuses on the impact of immigration detention, mental health conditions such as depression, post-traumatic stress and anxiety, cannot be treated while people remain in a situation of ongoing harm: “If CBSA is truly concerned about detainees’ mental health, step one is to get them out of harmful environments.”<sup>182</sup>

Canada is bound by the International Covenant on Civil and Political Rights (ICCPR), which obligates states to respect the rights to life and to humane treatment.<sup>183</sup> The UN Human Rights Committee, the independent expert body that interprets the ICCPR, has stated that states have:

[a] heightened duty of care to take any necessary measures to protect the lives of individuals deprived of their liberty by the State, since by arresting, detaining, imprisoning or otherwise depriving individuals of their liberty, States parties assume the responsibility to care for their lives and bodily integrity, and they may not rely on lack of financial resources or other logistical problems to reduce this responsibility.... The duty to protect the life of all detained individuals includes providing them with the necessary medical care and appropriate regular monitoring of their health.<sup>184</sup>

Failure to provide adequate medical care can also violate the prohibition of cruel, inhuman or degrading treatment under the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, to which Canada is party.<sup>185</sup> International human rights law also protects the right of everyone to the highest attainable standard of

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<sup>181</sup> Ibid.

<sup>182</sup> Interview with Dr. Janet Cleveland, Montreal, October 2020.

<sup>183</sup> ICCPR, arts. 6 and 10.

<sup>184</sup> UN Human Rights Committee, General Comment No. 36, Article 6: right to life, UN Doc. CCPR/C/GC/36 (2019), para 25.

<sup>185</sup> Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Convention against Torture), adopted December 10, 1984, G.A. Res. 39/46, annex, 39, U.N. GAOR Supp. (No. 51) at 197, UN Doc., A/39/51 (1984), entered into force June 26, 1987, ratified by Canada June 24, 1987, art. 16. See also UN Committee Against Torture, “Consideration of reports submitted by states parties under article 19 of the convention: Concluding observations of the Committee Against Torture – New Zealand,” UN Doc. CAT/C/NZL/CO/5, June 4, 2009. Other UN standards set out the need to ensure adequate health care for all prisoners and other detainees (see United Nations Standard Minimum Rules for the treatment of Prisoners (The Nelson Mandela Rules), A/RES/70/175, January 8, 2016, rules 24 to 35).

health.<sup>186</sup> Governments have an obligation to provide adequate health care, including preventive services, to all people in custody. States are prohibited from denying or limiting equal access to health care to anyone, including prisoners and detainees.<sup>187</sup> The UN Standard Minimum Rules for the Treatment of Prisoners (or “The Nelson Mandela Rules”), provide that:

The provision of health care for prisoners is a State responsibility. Prisoners should enjoy the same standards of health care that are available in the community, and should have access to necessary health-care services free of charge without discrimination on the grounds of their legal status.<sup>188</sup>

### *Lack of Access to Reasonable Accommodation*

Immigration detainees with physical and sensory disabilities also face severe barriers in provincial jails. Human Rights Watch and Amnesty International interviewed Abdelrahman Elmady, a 38-year-old man from Egypt with a hearing disability, who made a refugee claim upon arriving in Vancouver in 2017.<sup>189</sup> CBSA arrested Elmady at the airport and confiscated his belongings, including his re-chargeable hearing aid battery.<sup>190</sup> Elmady was incarcerated for approximately two months in three different provincial jails—Vancouver Jail, Fraser Regional Correctional Centre, and North Fraser Correctional Centre—and spent several weeks in solitary confinement.<sup>191</sup> He had to rely on CBSA officers to provide him with

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<sup>186</sup> Universal Declaration of Human Rights, adopted December 10, 1948, G.A. Res. 217A(III), UN Doc. A/810 at 71 (1948), art. 25; ICESCR, art. 12; CRC, art. 24; CEDAW, art.12; CRPD, art. 25. See also UN Committee on Economic, Social, and Cultural Rights, “General Comment No. 14: The Right to the Highest Attainable Standard of Health (Art. 12),” UN Doc. E/C.12/2000/4, August 11, 2000, <https://undocs.org/E/C.12/2000/4> (accessed May 16, 2021), paras. 1 and 2.

<sup>187</sup> UN Committee on Economic, Social, and Cultural Rights, “General Comment No. 14: The Right to the Highest Attainable Standard of Health (Art. 12),” UN Doc. E/C.12/2000/4, August 11, 2000, <https://undocs.org/E/C.12/2000/4> (accessed May 16, 2021), para. 34.

<sup>188</sup> See The Nelson Mandela Rules, rule 24.

<sup>189</sup> Interview with Abdelrahman Elmady, former immigration detainee, Vancouver, February 2021. See also Ethan Sawyer, “Activist’s deportation case adds to increased calls for oversight of border services,” *CBC News*, April 8, 2021, <https://www.cbc.ca/news/canada/british-columbia/deportation-vancouver-1.5978332> (accessed May 15, 2021); “Why Canada plan to deport Abdelrahman Elmady to face torture and maybe killed in Egypt,” *CBC News*, April 8, 2021, <https://www.youtube.com/watch?v=yHGsnHJEQnk> (accessed May 15, 2021); Nicholas Keung, “Egyptian asylum seeker with rights breached faces deportation,” *Toronto Star*, April 21, 2021, <https://www.thestar.com/news/canada/2021/04/21/egyptian-asylum-seeker-with-rights-breached-faces-deportation.html> (accessed May 18, 2021); Maan Alhmidi, “Lawyers for Egyptian asylum-seeker facing deportation say oversight of CBSA needed,” *Toronto Star*, May 19, 2021, <https://www.thestar.com/politics/2021/05/19/lawyers-for-egyptian-asylum-seeker-facing-deportation-say-oversight-of-cbsa-needed.html> (accessed May 19, 2021).

<sup>190</sup> Interview with Abdelrahman Elmady, former immigration detainee, Vancouver, February 2021.

<sup>191</sup> *Ibid.*

hearing aid batteries, which would last only 10 hours.<sup>192</sup> He told researchers that CBSA officers would only give him one battery at a time, and only at CBSA interviews or detention review hearings.<sup>193</sup> As a result, Elmady spent most of his time in detention in complete silence:

At the jail, I couldn't hear anything. I sent requests to the [jail authorities] but they responded that they couldn't afford to give me batteries.... I tried to save the battery as much as possible. I turned it off to save it for very important situations....

For the first three days [in detention], I asked to call my family and they gave me a phone. I told my wife: "Don't worry about me." After that, I couldn't contact my family for the rest of my time in detention. No one knew about me. I didn't know what to do. I wanted to speak with my family but I had no battery [in my hearing aid]....

When I finally got a battery, I felt so happy, I couldn't believe it. I felt like my life was back again.<sup>194</sup>

In another case, an Ontario-based lawyer described a client in detention who had a hearing disability and his hearing aid was damaged in the course of his arrest.<sup>195</sup> He remained in jail without a hearing aid for at least two months during the Covid-19 pandemic: "He was hypervigilant and scared.... He didn't know who might be coughing around him."<sup>196</sup>

The CRPD requires governments to prohibit all discrimination on the basis of disability, guarantee to persons with disabilities equal and effective legal protection against discrimination on all grounds, and take all appropriate steps to ensure that reasonable

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<sup>192</sup> Ibid.

<sup>193</sup> Ibid.

<sup>194</sup> Ibid.

<sup>195</sup> Interview with immigration and refugee lawyer (name withheld), Toronto, October 2020.

<sup>196</sup> Ibid.

accommodation is provided.<sup>197</sup> In these cases, Canada’s failure to provide reasonable accommodations to immigration detainees with disabilities violated the CRPD.<sup>198</sup>

### *Solitary Confinement*

CBSA not only invokes immigration detainees’ psychosocial disabilities or suicidality to justify their detention and place them in provincial jail rather than immigration holding centers but also sometimes subjects them to solitary confinement (also referred to as segregation, isolation, or separation). The Nelson Mandela Rules define solitary confinement as confinement “for 22 hours or more a day without meaningful human contact.”<sup>199</sup> The rules prohibit indefinite solitary confinement as well as prolonged solitary confinement (in excess of 15 consecutive days).<sup>200</sup> According to the UN special rapporteur on torture, “any imposition of solitary confinement beyond 15 days constitutes torture or cruel, inhuman, or degrading treatment or punishment depending on the circumstances.”<sup>201</sup> The special rapporteur also noted that detainees with mental health conditions “deteriorate dramatically in isolation” and solitary confinement “often results in severe exacerbation of a previously existing mental health condition.”<sup>202</sup> And the special rapporteur has emphasized that “solitary confinement of any duration must never be imposed on ... persons with mental or physical disabilities.”<sup>203</sup>

Provincial jail authorities in Canada frequently use solitary confinement for people with mental health conditions or those who express suicidal thoughts. A 2020 independent review of the treatment of people with mental health conditions—including criminally charged or convicted detainees—in Ontario provincial jails found that “prolonged segregation (15 days or longer) remains a routine practice for individuals with mental

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<sup>197</sup> CRPD, art. 5 (2) and (3).

<sup>198</sup> *Ibid.*

<sup>199</sup> The Nelson Mandela Rules, rule 44.

<sup>200</sup> *Ibid.* Solitary confinement is known by different terms, but these terms can involve different factors. See United Nations General Assembly, Interim report of the Special Rapporteur of the Human Rights Council on torture and other cruel, inhuman or degrading treatment or punishment, Juan Mendez, UN Doc. A/66/268, August 5, 2011, para 26.

<sup>201</sup> United Nations General Assembly, Interim report of the Special Rapporteur of the Human Rights Council on torture and other cruel, inhuman or degrading treatment or punishment, Juan Mendez, UN Doc. A/66/268, August 5, 2011, para 76.

<sup>202</sup> *Ibid.*, para 68.

<sup>203</sup> UN Human Rights Council, Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, UN Doc. A/HRC/31/57, January 5, 2016, para 22.

health and/or suicide risk alerts on file.”<sup>204</sup> The report also found that solitary confinement practices “function in a discriminatory manner” against people with mental health conditions and that “specialized care” may amount to “segregation by another name” because the province “has not set hard time-out-of-cell parameters for specialized care that exceed the two-hour threshold marking segregation.”<sup>205</sup> According to the review, data provided by the Ontario government regarding persons held in Ontario provincial jails from July 2018 to June 2019 indicates that individuals who were placed in solitary confinement frequently or for prolonged periods had much higher rates of mental health alerts and/or suicide alerts on file before their placement in solitary confinement than the total detained population:

- In total, 46 percent of people placed in solitary confinement at least once had a mental health alert on file, compared with 30 percent of the total population (which is inclusive of those placed in segregation); and
- In total, 36 percent of those who experience solitary confinement had a suicide alert on file before placement. This compares with 21 percent of the total detained population (inclusive of those who experienced solitary confinement).<sup>206</sup>

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<sup>204</sup> Ontario Ministry of Solicitor General, “Final Report of the Independent Reviewer on the Ontario Ministry of the Solicitor General’s Compliance with the 2013 ‘Jahn Settlement Agreement’ and the Terms of the Consent Order of January 16, 2018 Issued by the Human Rights Tribunal of Ontario,”

[www.mcscs.jus.gov.on.ca/english/Corrections/JahnSettlement/FinalReportIndependentReviewer.html#background](http://www.mcscs.jus.gov.on.ca/english/Corrections/JahnSettlement/FinalReportIndependentReviewer.html#background). While the focus of this review was generally on conditions in Ontario provincial jails, there is no indication that immigration detainees are treated any differently than criminally charged or convicted detainees with respect to solitary confinement practices.

<sup>205</sup> Ibid.

<sup>206</sup> Human Rights Watch analysis of Ontario Ministry of the Solicitor General Data on Inmates in Ontario, Detailed Data Download, 2019 and 2020. See also Ontario Ministry of the Solicitor General, “2019 Data release,” November 12, 2019, <https://www.mcscs.jus.gov.on.ca/english/Corrections/JahnSettlement/DatainmatesOntario/2019Datarelease.html#> (accessed May 16, 2021), downloadable dataset. According to the independent review, “The presence of mental health or suicide risk alerts does not necessarily indicate a confirmed mental health diagnosis. However, this does signal the presence of potential mental health or suicide-related concerns and should trigger healthcare supports” (Ontario Ministry of Solicitor General, “Final Report of the Independent Reviewer on the Ontario Ministry of the Solicitor General’s Compliance with the 2013 ‘Jahn Settlement Agreement’ and the Terms of the Consent Order of January 16, 2018 Issued by the Human Rights Tribunal of Ontario,”

[www.mcscs.jus.gov.on.ca/english/Corrections/JahnSettlement/FinalReportIndependentReviewer.html#background](http://www.mcscs.jus.gov.on.ca/english/Corrections/JahnSettlement/FinalReportIndependentReviewer.html#background), footnote 67). According to the review, among those who experienced 11 or more placements in solitary confinement, 77 percent had a mental health alert on file and 64 percent had a suicide alert, and among those held in solitary confinement for a year or longer continuously, 74 percent had a mental health alert and 53 percent had a suicide alert. In November 2019, Ontario introduced regulatory changes that require an independent review of detainees in solitary confinement at least once every five consecutive days. Nevertheless, in fiscal year 2019-2020, cases of prolonged solitary confinement continued: the maximum length was 566 consecutive days for men, and 96 days for women. During this period, 42 percent of detainees placed in segregation had an active mental health alert on file for at least one of their placements in segregation, compared with 30 percent of all unique individuals in custody (which is inclusive of those who experienced segregation). Additionally, 32 percent of those with at least one placement in segregation had an active suicide alert, compared with 19 percent of the



During this period, a fifth of immigration detainees in Ontario provincial jails—174 of 853—were placed in segregation at least once, according to provincial government data.<sup>207</sup> Among these placements, 40 percent involved immigration detainees with a mental health alert and/or a suicide alert, and 14 percent lasted for 15 or more days.<sup>208</sup>

Similarly, in fiscal year 2019-20, among the 1066 immigration detainees held in Ontario provincial jails, 17 per cent (176 detainees) were placed in solitary confinement at least once.<sup>209</sup> That year, 46 percent of immigration detainee placements in solitary confinement involved persons with a mental health alert and/or a suicide alert, and 13 percent lasted for 15 or more days.<sup>210</sup>

Nearly half (45 percent) of immigration detainees placed in solitary confinement for 15 days or fewer had a mental health and/or suicide alert in place.<sup>211</sup> And a much higher percentage of those held for long periods of time had such alerts: 77 percent of those held in solitary confinement from 30 to 90 days had an alert, and all five immigration detainees held in solitary confinement for 90 days or more had a mental health or suicide alert.<sup>212</sup>

Lawyers working with immigration detainees criticize the practice of solitary confinement. According to one, this practice means “physically preventing detainees from harming themselves, but not addressing what is causing suicidality.”<sup>213</sup> Detainees who are

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total custodial population (again inclusive of those who experienced segregation) (Ontario Ministry of the Solicitor General, “2020 Data release,” November 27, 2020, <https://www.mcscs.jus.gov.on.ca/english/Corrections/JahnSettlement/DatainmatesOntario/2020DataRelease.html#>, downloadable dataset).

<sup>207</sup> Ontario Ministry of the Solicitor General, “2019 Data release,” <https://www.mcscs.jus.gov.on.ca/english/Corrections/JahnSettlement/DatainmatesOntario/2019DataRelease.html#>, downloadable dataset).

<sup>208</sup> Human Rights Watch analysis of Ontario Ministry of the Solicitor General Data on Inmates in Ontario, Detailed Data Download, 2019. See also Ontario Ministry of the Solicitor General, “2019 Data release,” <https://www.mcscs.jus.gov.on.ca/english/Corrections/JahnSettlement/DatainmatesOntario/2019DataRelease.html#>, downloadable dataset).

<sup>209</sup> Ontario Ministry of the Solicitor General, “2020 Data release,” <https://www.mcscs.jus.gov.on.ca/english/Corrections/JahnSettlement/DatainmatesOntario/2020DataRelease.html#>, downloadable dataset).

<sup>210</sup> Human Rights Watch analysis of Ontario Ministry of the Solicitor General Data on Inmates in Ontario, Detailed Data Download, 2020. See also Ontario Ministry of the Solicitor General, “2020 Data release,” November 27, 2020, <https://www.mcscs.jus.gov.on.ca/english/Corrections/JahnSettlement/DatainmatesOntario/2020DataRelease.html#>, downloadable dataset).

<sup>211</sup> *Ibid.* A similar percentage of the solitary confinement placements between 15 and 30 days had these alerts.

<sup>212</sup> *Ibid.* Two of these detainees were held in solitary confinement between 90 and 180 days and three were held for more than 180 days.

<sup>213</sup> Interview with immigration and refugee lawyer (name withheld), Toronto, December 2020.

suspected of having suicidal ideation are stripped of their privacy and subjected to more invasive surveillance in order to prevent them from hurting themselves.<sup>214</sup> Three former immigration detainees reported that they witnessed authorities using solitary confinement in response to detainees expressing suicidal thoughts.<sup>215</sup>

One former immigration detainee, Joseph, described his mental health assessment by a CBSA officer upon arrest in Toronto, after which he was placed on suicide watch for 24 hours:

The thing I can't forget is that [CBSA] officer asking me: "Are you feeling suicidal right at this moment?" He was laughing at me with two other officers. I just froze because I was taking everything in. I was sick, too.... I just kept thinking: "Is this really happening?" Then the officer got mad and said: "Okay, this guy is not talking, take him to the nurse." They didn't give a shit. I was in handcuffs... I couldn't say: "No, please don't take me to jail." I was scared and didn't know what was going on....

I told the nurse I had been suicidal in the past but I got over it.... I didn't want to lie to these people. Then I had to follow the officer. They stripped me and put me on suicide watch. I was cold on the steel bed. I asked for a blanket, and they [the guards] said: "No, you're on suicide watch." Whenever I made any slight movement—even if I just turned from one side to another—they would come and record it.... The first time I saw a psychiatrist, I was cleared off isolation. He said: "You have to watch the things you say." ... After I was on suicide watch, I didn't want to tell anyone that I was struggling. I remember that steel bed—you put cadavers there, after you're dead."<sup>216</sup>

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<sup>214</sup> Ibid.; Interviews with service provider and advocate (name withheld), Montreal, October 2020, immigration and refugee lawyer (name withheld), Vancouver, November 2020, immigration and refugee (name withheld), Vancouver, November 2020, and immigration consultant and activist (name withheld), Toronto, June 2020.

<sup>215</sup> Interviews with "Charles," former immigration detainee (name withheld), Toronto, December 2020, "John," former immigration detainee (name withheld), Toronto, November 2020, and "Daryan," former immigration detainee (name withheld), Toronto, September 2020.

<sup>216</sup> Interview with "Joseph," former immigration detainee (name withheld), Toronto, December 2020.

Solitary confinement may also be used for other reasons. One former detainee, “Usman,” who went on a hunger strike for 32 days in an Ontario provincial jail, reported that he believed he was put in solitary confinement “because they didn’t want me to encourage other people [to join me].”<sup>217</sup> Another former immigration detainee, “Ken,” who was detained twice for approximately five years in total, and was held in a solitary confinement in an Ontario jail, recalled:

I was there for two weeks. They accused me of giving the guard a hard time. [There is] no shower in seg[regation]. No bed. You sleep on the floor. It was cold on the floor. You don’t get to come out. No phone. Stuck in there. No fresh air. You’re lucky if you get a shower every 72 hours but only if there is enough staff. A lot of people ... don’t come out the same. They develop anger, anxiety, stress, depression. It messes with your mind. It’s so torturous.<sup>218</sup>

A Toronto-based lawyer observed that some of his clients were placed in solitary confinement for their own protection: “Conditions are dangerous in jail and they [immigration detainees] don’t speak English or they get picked on.... But they come out and it’s like they’ve been tortured. They are never the same.”<sup>219</sup>

Immigration detainees incarcerated in immigration holding centers may also be subjected to solitary confinement. According to CBSA, the agency places immigration detainees in a “flexible living unit” when they “require one-on-one observation, may request it, or where placement in other living units is not in their best interests or those of other detainees.”<sup>220</sup> “Daryan,” who was held in an immigration holding center, reported that CBSA threatened to place him in solitary confinement if he refused to eat.<sup>221</sup>

A Montreal-based advocate observed that detainees in immigration holding centers suspected of having suicidal ideation are often isolated, barred from contacting other detainees or accessing the common room of the facility, and a guard is assigned to them

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<sup>217</sup> Interview with “Usman,” former immigration detainee (name withheld), Toronto, October 2020.

<sup>218</sup> Interview with “Ken,” former immigration detainee (name withheld), Toronto, November 2020.

<sup>219</sup> Interview with immigration and refugee lawyer (name withheld), Toronto, June 2020.

<sup>220</sup> Canada Border Services Agency, “Immigration holding centres,” [https://www.cbsa-asfc.gc.ca/security-secureite/ihc-csi-eng.html#\\_s1](https://www.cbsa-asfc.gc.ca/security-secureite/ihc-csi-eng.html#_s1).

<sup>221</sup> Interview with “Daryan,” former immigration detainee (name withheld), Toronto, September 2020.

for round-the-clock supervision.<sup>222</sup> CBSA confirmed that detainees who self-harm or have suicidal ideation may be placed on suicide watch with constant observation.<sup>223</sup> One former detainee who was held in solitary confinement for approximately 24 hours at the Toronto immigration holding center described it as a cold empty cell with a metal bed, a toilet, and surveillance cameras:

With cameras all over you, you don't have privacy to even go to the toilet.... I was going mad in there. I remember I was wearing black pants and I was picking at the fabric just to make the time go by. I didn't know what to do.... You just hear the guards coming and looking at you, and then they leave. When you ask to speak to someone, your word is not heard. They don't care about you.... You have to ask the guard for everything—it's all up to the guards what you are allowed to do....

I started getting sick, so they called the nurse. I was getting sick because of the stress and all the pressure. I felt like my heart stopped, I didn't know what was going on. Everything turned black. I told the nurse, but she only gave me Tylenol.... She said: "I have no right to talk to you."<sup>224</sup>

Being placed in solitary confinement may also inhibit immigration detainees' ability to hire a lawyer and meaningfully engage with the available legal avenues to remain in the country. In a particularly egregious case, a designated representative reported that provincial jail authorities in Newfoundland did not give her client a pen because he was in solitary confinement and for this reason he missed a deadline to fill out an application form to prevent his deportation to a war-torn country.<sup>225</sup>

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<sup>222</sup> Interview with service provider and advocate (name withheld), Montreal, October 2020.

<sup>223</sup> Canada Border Services Agency, unpublished document on file with Human Rights Watch and Amnesty International, April 2021. CBSA further indicated that where a detainee self-harms or has suicidal ideation, immigration holding center officers may also seek medical attention, including emergency services, refer the detainee to enhanced medical services such as a psychologist or psychiatrist, notify CBSA regional and national management, and offer medical and mental health support to any detainees who may be impacted by any critical incident.

<sup>224</sup> Interview with "Michelle," former immigration detainee (name withheld), Toronto, February 2021.

<sup>225</sup> Interview with designated representative (name withheld), Nova Scotia, December 2020.

## Coercive Measures Impacting the Mental Health of Detainees

Immigration authorities subject immigration detainees to coercive measures that harm detainees' mental health regardless of whether they entered detention with a pre-existing psychosocial disability.

### *Use of Handcuffs*

CBSA authorities routinely place immigration detainees in handcuffs.<sup>226</sup> CBSA's informational document for immigration detainees states that an officer "may handcuff you when you are being transported or attending any proceeding outside of the [detention] facility" and "exceptions may be made for people with disabilities, elderly people, minor children and pregnant women."<sup>227</sup>

Almost every former immigration detainee that researchers interviewed described being placed in handcuffs as a traumatic and deeply humiliating experience. "Michelle," who fled from a country in Africa to seek refugee protection and was arrested upon arrival at the Toronto airport in 2019, told researchers that she was visibly pregnant when she was placed in handcuffs. She recalled the trauma she experienced: "Being handled like that by men [CBSA officers] and being treated like a criminal, it opened up many wounds."<sup>228</sup> Another woman, who fled Afghanistan and sought refugee protection with her parents and siblings when she was 7 years old, recalled being detained upon arriving in Canada in 2007: "Seeing my mom handcuffed with my baby brother in her arms, it was just too much."<sup>229</sup>

Researchers interviewed "Idriss," a 19-year-old man from an African country who arrived in Canada in 2020 and claimed refugee protection upon entering the country. He was arrested at the airport and detained at an immigration holding center. He described the shock of being placed in handcuffs:

I was handcuffed from the airport to the Laval IHC [immigration holding center]. This was the first time I had ever been handcuffed. This was a big

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<sup>226</sup> Canada Border Services Agency, "Information for people detained under the *Immigration and Refugee Protection Act*," 2015, <https://www.cbsa-asfc.gc.ca/publications/pub/bsf5012-eng.pdf> (accessed May 16, 2021).

<sup>227</sup> *Ibid.*, p. 3.

<sup>228</sup> Interview with "Michelle," former immigration detainee (name withheld), Toronto, February 2021.

<sup>229</sup> Interview with "Amina," former immigration detainee (name withheld), Toronto, March 2021.

shock for me. I never imagined this would one day happen to me. I experienced war in my home country but I had never been handcuffed. I asked them why they are doing this, and one of the officers said to me: “Welcome to North America.” I never expected that Canada would do this. In my mind, handcuffing someone who did nothing wrong only happens in a third world country.<sup>230</sup>

Another former detainee recalled CBSA officers telling him that he would be deported in handcuffs: “They told me, ‘We already have your [flight] ticket. If you are nice to us, maybe we’ll remove the handcuffs on the airplane.’ I told them, ‘Yes, please, because I don’t want other people to look at me.’ ... It’s humiliating.”<sup>231</sup>

Several people researchers interviewed, including two doctors, a lawyer, and a service provider, confirmed that CBSA officers and provincial jail authorities routinely place immigration detainees in handcuffs, even when attending medical appointments.<sup>232</sup>

One detainee who was held at an immigration holding center recounted that he required dental treatment and CBSA forced him to choose between attending his dental appointment in handcuffs and leg shackles or not attending his appointment at all.<sup>233</sup> He chose the latter and endured the pain until he was released from detention several days later.<sup>234</sup>

Researchers interviewed “Usman,” a man from an African country who fled from his country of origin as a child due to war. As an adult, he was detained in an Ontario provincial jail for about three-and-a-half years while CBSA attempted to deport him, although his country of origin did not recognize him as a citizen. Usman recalled a visit to the hospital in handcuffs during his detention:

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<sup>230</sup> Interview with “Idriss,” former immigration detainee (name withheld), Montreal, December 2020.

<sup>231</sup> Interview with “Diego,” former immigration detainee (name withheld), Ottawa, January 2021.

<sup>232</sup> Interviews with service provider and advocate (name withheld), Montreal, October 2020, psychiatrist (name withheld), Toronto, June 2020, immigration and refugee lawyer (name withheld), Montreal, January 2021, and Dr. Janet Cleveland, Montreal, October 2020.

<sup>233</sup> Interview with “Souleymane,” former immigration detainee (name withheld), Toronto, January 2021.

<sup>234</sup> Ibid.

I was taken to the hospital one time. I was having hearing problems.... I was handcuffed and I remember going into the elevator with the CBSA officer and prison guards. In the elevator, there was a kid—a young boy around three or four years old—with his father. As soon as we got into the elevator, the boy was shocked. He asked his father: “What did this man do?”

And I remember just standing there ... His father couldn’t answer because he didn’t understand the situation but he probably thought I was some kind of criminal, or that I killed somebody. Who knows? ... On our way back, instead of taking the same elevator, [CBSA] took me through the freight elevator. I asked the officer why we are going through the freight elevator. And he said: “Out of sight – out of mind.” ... That was the saddest moment of my life.<sup>235</sup>

A Montreal-based service provider recalled how a pregnant woman detained at the Laval immigration holding center was taken to the hospital and spared handcuffs because she was pregnant but had a miscarriage and was handcuffed the following day on her way to an interview with CBSA.<sup>236</sup>

### *Impact of Cutting Off Access to Human Contact and Support Networks*

According to two lawyers and a psychiatrist, immigration detainees are isolated and cut off from their support network, their families, and their loved ones.<sup>237</sup> A Montreal-based lawyer observed that many of her clients in detention are “starved for human connection and compassion, and they lose hope.”<sup>238</sup> This is particularly the case for those held in provincial jails, who largely rely on phones to contact the outside world.<sup>239</sup>

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<sup>235</sup> Interview with “Usman,” former immigration detainee (name withheld), Toronto, October 2020.

<sup>236</sup> Interview with service provider and advocate (name withheld), Montreal, October 2020.

<sup>237</sup> Interviews with immigration and refugee lawyer (name withheld), Toronto, September 2020, and psychiatrist (name withheld), Toronto, June 2020.

<sup>238</sup> Interview with immigration and refugee lawyer (name withheld), Montreal, December 2020.

<sup>239</sup> Ibid.

According to the Ontario Ministry of the Solicitor General, “the telephone is the primary method by which inmates maintain contact with others.”<sup>240</sup> However, people held in Ontario provincial jails, including immigration detainees, cannot make calls to cellphones; instead, they are limited to making calls to landlines, the fees for which must be covered by the call recipient.<sup>241</sup> A Montreal-based lawyer noted that detainees in Quebec provincial jails are also limited to making collect calls to landlines.<sup>242</sup> Provincial jails are often located far from urban centers so immigration detainees often have to make expensive long-distance calls to contact loved ones and a single 20-minute call can cost up to C\$30.<sup>243</sup> Phone access in Ontario provincial jails is generally available for five hours a day and there is a 20-minute limit on calls, after which “the call automatically ends.”<sup>244</sup> A former immigration detainee described the challenges of calling his wife while he was held in an Ontario provincial jail:

I talked to [my wife] whenever I got the opportunity. But I couldn’t call her cellphone. I had to call a friend who had a landline and he would connect [my wife] to the line. So I had no private conversations with [my wife]. And it was not only my friend who was on the line but also jail authorities. You could hear guards in the background listening to our calls.<sup>245</sup>

Immigration detainees also face severe barriers in communicating with their lawyers. One former detainee who was in an Ontario provincial jail following the onset of Covid-19 recalled: “I put in so many requests [to guards] to call a lawyer.... It was only after 16 days

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<sup>240</sup> Ontario Ministry of the Solicitor General, “Policies and Guidelines: Inmates Telephone Communication,” August 19, 2016, <https://www.mcscs.jus.gov.on.ca/english/Corrections/Policiesandguidelines/CorrectionsInmateTelephoneCommunication.html> (accessed May 16, 2021)

<sup>241</sup> Ibid. See also Criminalization and Punishment Education Project (CPEP), “Will you accept the charges?” 2019, [https://cpep.org/wp-content/uploads/2019/10/Ontario-Jail-Telephone-Report\\_JAIL-Hotline\\_Final\\_October-2019.pdf](https://cpep.org/wp-content/uploads/2019/10/Ontario-Jail-Telephone-Report_JAIL-Hotline_Final_October-2019.pdf) (accessed May 16, 2021); Marsha McLeod, “Broken telephone: How Ontario’s prison-phone system leaves inmates disconnected,” *TVO*, February 11, 2021, <https://www.tvo.org/article/broken-telephone-how-ontarios-prison-phone-system-leaves-inmates-disconnected> (accessed May 16, 2021).

<sup>242</sup> Interview with immigration and refugee lawyer (name withheld), Montreal, January 2021.

<sup>243</sup> “Company behind Bell Let’s Talk profits off vulnerable inmates through phone deal with jails: lawyer,” *CBC News: As It Happens*, January 29, 2020, <https://www.cbc.ca/radio/asithappens/as-it-happens-tuesday-edition-1.5443076/company-behind-bell-let-s-talk-profits-off-vulnerable-inmates-through-phone-deal-with-jails-lawyer-1.5444598#:~:text=An%20Ottawa%20lawyer%20is%20calling%20out%20Bell%20Canada%20for%20reaping,for%20inmates%20in%20provincial%20jails> (accessed May 16, 2021).

<sup>244</sup> Ontario Ministry of the Solicitor General, “Policies and Guidelines: Inmates Telephone Communication,” <https://www.mcscs.jus.gov.on.ca/english/Corrections/Policiesandguidelines/CorrectionsInmateTelephoneCommunication.html>.

<sup>245</sup> Interview with “Charles,” former immigration detainee (name withheld), Toronto, December 2020.



[in detention] that I realized how much my lawyer tried to contact me.... I had to kneel down and beg a guard to let me have a call [with my lawyer].”<sup>246</sup> Another former detainee reported: “My lawyer would try to contact me and I never received the message.”<sup>247</sup>

Lawyers whose clients are detained in one of eight Ontario provincial jails can book appointments to call their clients through a teleconferencing system called Access Defence.<sup>248</sup> However, lawyers whose clients are detained in other provincial jails in Ontario must first call the jail or send a request via fax and rely on guards to inform their clients of the call and facilitate the call.<sup>249</sup> Four lawyers reported that provincial jail guards often fail to inform their clients of their calls.<sup>250</sup> One designated representative also noted that he has trouble accessing detainees he is representing in provincial jail: “We rely on the goodwill of the jail [guards] to get in touch with clients.”<sup>251</sup> The same designated representative noted that his calls with clients happen in the presence of jail guards.<sup>252</sup> He recounted one call where his client “got very emotional and had difficulty getting back on track” and the guard interjected to say “he is acting up” and hung up the phone.<sup>253</sup>

According to the UN Working Group on Arbitrary Detention, “All detained migrants must be able to communicate with the outside world and relatives, including by telephone or email.”<sup>254</sup>

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<sup>246</sup> Interview with “Joseph,” former immigration detainee (name withheld), Toronto, December 2020.

<sup>247</sup> Interview with “Charles,” former immigration detainee (name withheld), Toronto, December 2020.

<sup>248</sup> Ontario Ministry of Attorney General, “Lawyers – Need to Talk to Your Clients? access: defence,” September 7, 2016, <https://www.attorneygeneral.jus.gov.on.ca/english/about/pubs/accessdefence.php> (accessed May 15, 2021).

<sup>249</sup> Interviews with immigration and refugee lawyer (name withheld), Nova Scotia, January 2021, immigration and refugee lawyer (name withheld), Toronto, September 2020, immigration and refugee lawyer (name withheld), Toronto, October 2020, and immigration and refugee lawyer (name withheld), Toronto, September 2020.

<sup>250</sup> Interviews with immigration and refugee lawyer (name withheld), Toronto, September 2020, immigration and refugee lawyer (name withheld), Toronto, October 2020, immigration and refugee lawyer (name withheld), Toronto, September 2020, and immigration and refugee lawyer (name withheld), Toronto, January 2021.

<sup>251</sup> Interview with designated representative (name withheld), Toronto, November 2020.

<sup>252</sup> Ibid.

<sup>253</sup> Ibid.

<sup>254</sup> UN Working Group on Arbitrary Detention, “Revised Deliberation No. 5 on deprivation of liberty of migrants,” [https://www.ohchr.org/Documents/Issues/Detention/RevisedDeliberation\\_AdvanceEditedVersion.pdf](https://www.ohchr.org/Documents/Issues/Detention/RevisedDeliberation_AdvanceEditedVersion.pdf), para. 37.

## *Violence and Overcrowding in Provincial Jails*

Researchers interviewed seven former immigration detainees held in provincial jails who stated they were either assaulted or were afraid of being violently targeted in jail.<sup>255</sup> A former immigration detainee described his experience in an Ontario provincial jail: “There is a pecking order and fights every day, and you never know when it’s going to be your turn.... Jail is defined by the fear of not knowing what’s going to happen.”<sup>256</sup> Another former detainee who was held in a British Columbia provincial jail vividly recalled her fear of being held with detainees charged or convicted of violent offenses:

My first roomie was there because she assaulted her mother and the mother spent 10 days in the hospital. And the lady that ... was giving the food [in the cafeteria] was there because she planned ... to murder her lover’s wife. And another lady I was working with in the laundry, she was there because she killed her daughter.<sup>257</sup>

Another former detainee similarly described being fearful of other people in jail:

I had to smile to my cellmate’s face because I was scared of him. I talked to a guard and he told me to sign a waiver to go to protective custody, it’s normally for people who have threats against them and who are scared for their lives. I thought, “Let me just avoid living like I have to join a gang and watch over my shoulder.”

Then I realized I was working with another person who was a rapist. He asked me to come stay in his cell.... [After work] I just had to hurry to my cell and stay there. I kept thinking, “It doesn’t make sense that I’m here.”<sup>258</sup>

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<sup>255</sup> Interviews with “Ahmed,” former immigration detainee (name withheld), Toronto, August 2020, “Charles,” former immigration detainee (name withheld), Toronto, December 2020, “Jason,” former immigration detainee (name withheld), Toronto, December 2020, “Joseph,” former immigration detainee (name withheld), Toronto, December 2020, “John,” former immigration detainee (name withheld), Toronto, November 2020, “Diego,” former immigration detainee (name withheld), Ottawa, January 2021, and “Ken,” former immigration detainee (name withheld), Toronto, November 2020.

<sup>256</sup> Interview with “Jason,” former immigration detainee (name withheld), Toronto, December 2020.

<sup>257</sup> Interview with “Ana,” former immigration detainee (name withheld), Vancouver, December 2020.

<sup>258</sup> Interview with “Joseph,” former immigration detainee (name withheld), Toronto, December 2020.

Immigration lawyers told researchers that violence is widespread in provincial jails and three reported that their clients have been assaulted, including one in the course of a so-called fight club where some detainees in the jail forced others to fight each other while guards stood by.<sup>259</sup> One former detainee stated: “[Surveillance] cameras cannot see showers. Showers are dangerous. People have weapons [made of] ceramic tiles.”<sup>260</sup> Another former detainee reported that he was raped in an Ontario provincial jail:

Inmates use you as tools. They called me “fresh fish”: this means new inmate. Three inmates took me, two of them hold you down while the third rapes you. Guards allow inmates to abuse “fresh fish.” They just laugh about it. I needed to sharpen a pencil to use it as protection.<sup>261</sup>

Another former immigration detainee who was held in an Ontario provincial jail recalled an incident where he was assaulted by a detainee: “One of the guards told me that he could arrange for me and this person to be in a room alone, like, ‘If you want to get him, I could arrange for that kind of thing.’ ... [It seemed that] the reason he proposed that, it was for his and his co-workers’ entertainment so they could watch these xxxxxx fight.”<sup>262</sup>

The conditions of confinement, restrictive rules and routines, and overcrowding in provincial jails also exacerbate tension and hostility among those held in jails, including immigration detainees. Two former detainees reported overcrowding in provincial jail cells, even during the Covid-19 pandemic.<sup>263</sup> For example, one former detainee said he was held with three others in a cell designed for two, with “people sleeping with their head against

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<sup>259</sup> Interviews with immigration and refugee lawyer (name withheld), Nova Scotia, December 2020, immigration and refugee lawyer (name withheld), Toronto, January 2021, and immigration and refugee lawyer (name withheld), Toronto, January 2021. A 2019 report by the National Union of Public and General Employees documented severe overcrowding and increasing violence in jails across the country (National Union of Public and General Employees, “The Crisis in Provincial Correctional Services: Overcrowding,” June 2019, <https://nupge.ca/sites/default/files/documents/The%20Crisis%20in%20Provincial%20Correctional%20Services%20-%20Overcrowding%20.pdf> (accessed May 16, 2021)). See also Justin Ling, “Houses of hate: How Canada’s prison system is broken,” *Macleans*, February 28, 2021, <https://www.macleans.ca/news/canada/houses-of-hate-how-canadas-prison-system-is-broken/> (accessed May 16, 2021); Michael Mui, “There’s no escape from violence in B.C.’s jails, and even the guards are in on it,” *Toronto Star*, May 5, 2019, <https://www.thestar.com/vancouver/2019/05/05/theres-no-escape-from-violence-in-bcs-jails-and-even-the-guards-are-in-on-it.html> (accessed May 16, 2021).

<sup>260</sup> Interview with “Jonathan,” former immigration detainee (name withheld), Toronto, December 2020.

<sup>261</sup> Interview with “Charles,” former immigration detainee (name withheld), Toronto, December 2020.

<sup>262</sup> Interview with “John,” former immigration detainee (name withheld), Toronto, November 2020.

<sup>263</sup> Interviews with “Jason,” former immigration detainee (name withheld), Toronto, December 2020, and “Isaias,” former immigration detainee (name withheld), Toronto, December 2020.

the toilet.”<sup>264</sup> Another former immigration detainee who was held in an Ontario provincial jail during the Covid-19 pandemic reported:

My cell was 11 by 8 feet with a metal bunk bed and a toilet. Basically, you sleep in a washroom with another person. There is no privacy. When the toilet would get clogged, it took [guards] 10 days to fix it and it’s a regular thing that toilets get clogged. We had to use blankets to tie around the toilet to control the smell.<sup>265</sup>

In June 2020, about 100 detainees went on a hunger strike at Central East Correctional Centre in Lindsey, Ontario—where immigration detainees are also held—because of “inhumane conditions,” reporting a lack of clean drinkable water, dirty clothing, poor food quality, lack of programming, lack of access to quality hygiene products, and bad air quality.<sup>266</sup>

## Long-Term Impact of Detention on Mental Health

The way we were treated—being arrested and detained—gave us the idea that we are different.... It set the precedent that we are not welcomed.<sup>267</sup>

– “Amina,” former immigration detainee held in the Toronto immigration holding center after making a refugee claim upon arrival in Canada in 2007

The harm of immigration detention does not end when detainees are released but extends well into the years that follow and can change the trajectory of people’s lives. As one advocate described, “People’s resilience is shattered, families are destroyed, and communities are harmed.”<sup>268</sup> This may particularly affect women; globally women are more likely to experience some common psychosocial disabilities, such as depression and anxiety.<sup>269</sup> Some former immigration detainees we interviewed said they experienced long-

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<sup>264</sup> Interview with “Jason,” former immigration detainee (name withheld), Toronto, December 2020.

<sup>265</sup> Interview with “Charles,” former immigration detainee (name withheld), Toronto, December 2020.

<sup>266</sup> Greg Davis, “100 inmates at Lindsey super jail staging hunger strike over water access, food quality,” *Global News*, June 16, 2020, [www.globalnews.ca/news/7072802/lindsay-inmates-hungver-strike/](http://www.globalnews.ca/news/7072802/lindsay-inmates-hungver-strike/) (accessed May 16, 2021); “About 100 inmates to stage hunger strike at Lindsey jail over inhumane conditions,” *CBC News*, June 15, 2020, [www.cbc.ca/news/canada/toronto/hunger-strike-central-east-correctional-centre-lindsay-jail-inhumane-conditions-1.5611936](http://www.cbc.ca/news/canada/toronto/hunger-strike-central-east-correctional-centre-lindsay-jail-inhumane-conditions-1.5611936) (accessed May 16, 2021).

<sup>267</sup> Interview with “Amina,” former immigration detainee (name withheld), Toronto, March 2021.

<sup>268</sup> Interview with immigration consultant and activist (name withheld), Toronto, June 2020.

<sup>269</sup> “Mental Health and Substance Use,” *World Health Organization*, <https://www.who.int/teams/mental-health-and-substance-use/gender-and-women-s-mental-health> (accessed May 16, 2021).

term emotional and physical impacts. The government does not take any responsibility for the long-term impacts of detention on detainees and their loved ones.

One lawyer described the case of a client, “Karim,” who was detained in two Ontario provincial jails for a total of about three years because authorities considered him to be a flight risk and were not satisfied with his identity documents. He had schizophrenia and authorities were aware of his diagnosis throughout his detention. His mental and physical health deteriorated significantly in jail until CBSA acknowledged an impasse with respect to obtaining proof of his identity and nationality. As a result, he is *de facto* stateless. His lawyer recalled speaking with him about six years after he was released from detention:

He still broke down in discussing the time that he spent in [jail] and how dehumanizing it was. He now has a wife, they just had a baby, he has opened his own business.... He’s gotten his whole life together and yet he still finds detention to be the most traumatizing aspect of his past, which includes being made an orphan as a child in Lebanon during the civil war. He says his experience in jail in Canada was the worst thing that he ever experienced. It still haunts him to this day.<sup>270</sup>

When researchers interviewed Karim, he described the impact his detention continues to have on his life:

I haven’t recovered from detention. You never recover. The damage is done forever. Sometimes I feel like I’m there again. You have to force yourself to accept this reality, even if it’s unacceptable. Detention harmed my mental health so much that it hurt my physical health. Every day now I have pain.... People are hurting in there.... It’s difficult to remember. Three years sitting there for nothing.<sup>271</sup>

Another former detainee explained that almost a decade after her detention, she still cannot wear anything on her wrists because it reminds her of being handcuffed.<sup>272</sup>

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<sup>270</sup> Interview with immigration and refugee lawyer (name withheld), Toronto, June 2020.

<sup>271</sup> Interview with “Karim,” former immigration detainee (name withheld), Toronto, February 2021.

<sup>272</sup> Interview with “Ana,” former immigration detainee (name withheld), Vancouver, December 2020.

She also does not wear green because it was the color of her jail garb.<sup>273</sup> When she sees a CBSA officer, she says she starts shaking and has panic attacks.<sup>274</sup>

One lawyer who has worked with dozens of immigration detainees and represented some of Canada's longest-held immigration detainees described the long-term impact of detention on his clients: "They tell me they can't sleep at night, they are flashing back to being in the jail cell, they are afraid of going out, they are afraid of police officers."<sup>275</sup>

Detention also causes lasting trauma and distrust of authorities. One woman from Afghanistan, who was detained at the border as a seven-year-old child with her parents and siblings in 2007 upon entering Canada to claim refugee protection, observed:

Detention made us less trusting towards the police; less trusting that even if we have not done anything wrong, that we would need to prove our innocence.... It was always in my head that we have no [citizenship]. We always have to follow the rules. Obey, obey, obey.... And I was supposed to forget everything that happened and definitely not speak about it.... I had good memories from back home. I never took in this idea of being in a war. My parents did a good job of concealing that part. I never saw them cry until we got to the [Canadian] border.<sup>276</sup>

Another former detainee stated he was first taken into CBSA custody from a hospital, after he was assaulted and called the police to report the crime: "You can be the victim of a crime and you're afraid to call the police, ... you can't even call an ambulance."<sup>277</sup> He was detained for approximately one year while CBSA attempted to deport him, despite the fact that his country of birth did not recognize him as a citizen.

When asked what message he would send to Canadian authorities about detention, one former detainee said:

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<sup>273</sup> Ibid.

<sup>274</sup> Ibid.

<sup>275</sup> Interview with immigration and refugee lawyer (name withheld), Toronto, June 2020.

<sup>276</sup> Interview with "Amina," former immigration detainee (name withheld), Toronto, March 2021.

<sup>277</sup> Interview with "John," former immigration detainee (name withheld), Toronto, November 2020.

I don't want them to know me because these people have power. They can just strip you of everything, you just lose your voice, and the world goes on without you. I just want to have a simple life. I just feel like I'm too small to say anything to Canada. If you're not aware of it, just be grateful you're not in position to deal with this....

[In jail] I watched a SWAT [special weapons and tactics] team come and pepper spray someone who was losing his mind and they took him away. I saw someone overdosing on fentanyl [an opioid medication]. The guards were just having a regular conversation while a nurse was trying to revive the guy. I just thought, "If I was dying – would anyone care?"<sup>278</sup>

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<sup>278</sup> Interview with "Joseph," former immigration detainee (name withheld), Toronto, December 2020.

### III. Covid-19 Pandemic

Following the onset of the Covid-19 pandemic in early 2020, immigration authorities released considerable numbers of people from immigration detention across Canada.<sup>279</sup> CBSA data indicates that from July to September 2020 the agency detained 476 people, compared with 2,578 in the same period the previous year.<sup>280</sup> According to CBSA, the reduction in the number of immigration detainees can be explained by “public safety measures put in place to limit the spread of COVID-19 since mid-March,” including border closures to most foreign nationals.<sup>281</sup> The agency further indicated that “the pandemic reinforced the CBSA’s commitment to finding solutions for release at the first possible opportunity” and CBSA asked officers to “focus efforts to explore all viable alternatives to detention in all cases, as long as there is no public safety concern.”<sup>282</sup>

For those who remained incarcerated, however, conditions of detention became harsher. Visitations were suspended and detainees were subjected to far more frequent lockdowns, during which they could not access phones or showers.<sup>283</sup> One former detainee held in an Ontario jail reported that the unit where he was held was on lockdown for nearly the entire month of August 2020 because of a shortage of guards.<sup>284</sup> Without capacity to control who comes into their space, who touches the utensils they use to eat, and who searches them, detainees were constantly at risk of getting infected by guards and others in the facility.<sup>285</sup>

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<sup>279</sup> Rachel Browne, “Canada is releasing immigration detainees at ‘unprecedented’ rates amid COVID-19 fears,” *Global News*, April 15, 2020, <https://globalnews.ca/news/6861756/canada-releasing-immigration-detainees-coronavirus-covid-19/> (accessed May 16, 2021).

<sup>280</sup> Canada Border Services Agency, “Quarterly detention statistics: First and second quarter (Q1-Q2), fiscal year 2020 to 2021,” December 10, 2020, <https://www.cbsa-asfc.gc.ca/security-secureite/detent/qstat-2020-2021-eng.html> (accessed May 16, 2021).

<sup>281</sup> *Ibid.*

<sup>282</sup> *Ibid.*

<sup>283</sup> Interview with immigration and refugee lawyer (name withheld), Toronto, October 2020; Samer Muscati and Hanna Gros (Human Rights Watch), “Canada’s Immigration Detainees At Higher Risk In Pandemic,” commentary, *Ottawa Citizen*, March 23, 2020, <https://www.hrw.org/news/2020/03/23/canadas-immigration-detainees-higher-risk-pandemic>; Hanna Gros, “Immigration Detainees in Canada Desperate for Release, Transparency,” commentary, Human Rights Watch Dispatch, April 7, 2020, <https://www.hrw.org/news/2020/04/07/immigration-detainees-canada-desperate-release-transparency>.

<sup>284</sup> Interview with “Charles,” former immigration detainee (name withheld), Toronto, December 2020.

<sup>285</sup> Interview with immigration and refugee lawyer (name withheld), Toronto, October 2020; Samer Muscati and Hanna Gros (Human Rights Watch), “Canada’s Immigration Detainees At Higher Risk In Pandemic,” commentary, *Ottawa Citizen*, March 23, 2020, <https://www.hrw.org/news/2020/03/23/canadas-immigration-detainees-higher-risk-pandemic>; Hanna Gros, “Immigration Detainees in Canada Desperate for Release, Transparency,” commentary, Human Rights Watch Dispatch, April 7, 2020, <https://www.hrw.org/news/2020/04/07/immigration-detainees-canada-desperate-release-transparency>.



Detainees reported inadequate ventilation and poor sanitary conditions in detention.<sup>286</sup> In the year following the onset of the pandemic, between March 2020 and March 2021, detainees at Quebec’s Laval immigration holding center went on hunger strike three times to protest conditions of detention.<sup>287</sup>

Human Rights Watch interviewed “Marlon,” a man in his 30s from Colombia who was detained at an immigration holding center for approximately four months and went on two hunger strikes in February 2021. He said he and two other detainees in the facility tested positive for Covid-19 and CBSA responded by placing them in conditions akin to solitary confinement for about a week.<sup>288</sup> Marlon said he was locked in a “small and dirty cell,” which he could only leave to use the bathroom or make 15-minute phone calls once every two hours in the presence of a guard from whom he could not physically distance.<sup>289</sup> Marlon said he had a fever for several days but did not receive any medical attention besides painkillers and having his temperature taken. “I felt powerless and anxious. I was having trouble breathing,” he said. Despite the raging pandemic, Marlon said it was impossible to stay safe from the virus in the detention facility:

Ventilation is inadequate because all the windows are shut, the sanitary conditions are poor, and guards sometimes remove their masks.... I felt it was inconceivable that they put us in these conditions where we were unable to protect ourselves from the virus.<sup>290</sup>

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<sup>286</sup> Interviews with “Charles,” former immigration detainee (name withheld), Toronto, December 2020, “Diego,” former immigration detainee (name withheld), Ottawa, January 2021; Hanna Gros, “Immigration Detainees Hunger Strike Again As Canada Fails To Listen,” commentary, Human Rights Watch Dispatch, March 20, 2021, <https://www.hrw.org/news/2021/03/20/immigration-detainees-hunger-strike-again-canada-fails-listen>.

<sup>287</sup> Jillian Kestlet-D’Amours, “Immigration Detainees Are on a Hunger Strike Over Coronavirus Fears,” *Vice News*, March 26, 2020, <https://www.vice.com/en/article/939v7v/laval-quebec-immigration-detainees-are-on-a-hunger-strike-over-coronavirus-fears> (accessed May 16, 2021); Lisa-Marie Gervais, “Appel à la libération des détenus d’un centre de surveillance de l’immigration,” *Le Devoir*, February 23, 2021, <https://www.ledevoir.com/societe/595703/des-cas-de-covid-19-au-centre-de-detention-de-l-immigration-de-laval> (accessed May 16, 2021); Hanna Gros, “Immigration Detainees Hunger Strike Again As Canada Fails To Listen,” commentary, Human Rights Watch Dispatch, March 20, 2021, <https://www.hrw.org/news/2021/03/20/immigration-detainees-hunger-strike-again-canada-fails-listen>.

<sup>288</sup> Interview with “Marlon,” immigration detainee (name withheld), Laval, March 2021.

<sup>289</sup> *Ibid.*

<sup>290</sup> *Ibid.*

In response to a Covid-19 outbreak at the Montreal-area facility in February 2021, authorities reportedly placed at least 12 detainees, including Marlon, in isolation.<sup>291</sup> According to Marlon and Solidarity Across Borders, a migrant justice network that works closely with immigration detainees in the Montreal-area detention facility, detainees were not tested again before they were transferred from isolation back into shared spaces where they were unable to physically distance.<sup>292</sup>

According to three former immigration detainees, in at least two Ontario provincial jails, detainees were not given masks.<sup>293</sup> A former detainee who was held at the Maplehurst Correctional Complex in Ontario reported that only some guards wore masks and provided none to detainees:

While I was detained, I had to go to the hospital and I received a mask there. But as soon as I got back to jail, the guards told me to throw out the mask because they said I could use the little metal [strip] inside as a tool.... We had concerns about guards coming in and infecting us. But they don't care. The jail is like their house. They do whatever they want.<sup>294</sup>

Another former detainee who was held at the Ottawa-Carleton Detention Centre also told researchers that detainees did not receive masks.<sup>295</sup> A Toronto-based lawyer noted that jail authorities were “cavalier with people’s lives” in jail: “A guard came [to jail] dressed up in a dinosaur costume with a sign saying, ‘Wash your hands so you don’t go extinct.’”<sup>296</sup>

Several provincial jails across Canada experienced major outbreaks of Covid-19. In January 2021, Maplehurst Correctional Complex—where the largest portion of immigration

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<sup>291</sup> Pierre Saint-Arnaud, “Groups call for detainees to be freed from Laval facility amid COVID-19 outbreak,” *Montreal Gazette*, February 23, 2021, <https://montrealgazette.com/news/local-news/groups-call-for-detainees-to-be-freed-from-laval-facility-amid-covid-19-outbreak> (accessed May 16, 2021).

<sup>292</sup> Interviews with “Marlon,” immigration detainee (name withheld), Laval, March 2021, and Solidarity Across Borders representatives, Montreal, March 2021; Hanna Gros, “Immigration Detainees Hunger Strike Again As Canada Fails To Listen,” commentary, Human Rights Watch Dispatch, March 20, 2021, <https://www.hrw.org/news/2021/03/20/immigration-detainees-hunger-strike-again-canada-fails-listen>.

<sup>293</sup> Interviews with “Charles,” former immigration detainee (name withheld), Toronto, December 2020, “Diego,” former immigration detainee (name withheld), Ottawa, January 2021, and “Jason,” former immigration detainee (name withheld), Toronto, December 2020.

<sup>294</sup> Interview with “Charles,” former immigration detainee (name withheld), Toronto, December 2020.

<sup>295</sup> Interview with “Diego,” former immigration detainee (name withheld), Ottawa, January 2021.

<sup>296</sup> Interview with immigration and refugee lawyer (name withheld), Toronto, January 2021.

detainees were held since the onset of the pandemic—had the largest outbreak among Ontario provincial jails.<sup>297</sup>

In the course of the pandemic, the proportion of immigration detainees held in provincial jails rather than immigration holding centers, as well as the average length of detention, both doubled.<sup>298</sup> According to CBSA, the reason for this drastic shift is the “risk profiles” of immigration detainees: “Due to the increased use of alternatives to detention (ATD) for lower-risk individuals, plus the low number of people coming into Canada, those who remain in detention tend to be higher-risk cases.”<sup>299</sup> However, between April and October 2020, only about 20 percent of detainees were held for public safety concerns.<sup>300</sup> During this period—as before the pandemic—the vast majority of immigration detainees were held because authorities believed they constituted a flight risk, for the purposes of completing an examination, or because authorities were unsatisfied with their identity documents.<sup>301</sup>

According to an immigration lawyer in Toronto, despite the reductions in the number of immigration detainees during the pandemic, “Everything can easily change back, and we cannot rely solely on the will of the enforcement authority to protect basic rights.”<sup>302</sup>

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<sup>297</sup> Jim Bronskill, “Researchers flag increase in COVID-19 cases in Canadian prisons, jails,” *CVT News*, January 11, 2021, <https://www.ctvnews.ca/health/coronavirus/researchers-flag-increase-in-covid-19-cases-in-canadian-prisons-jails-1.5262468> (accessed May 16, 2021); Alyshah Hasham and Akrit Michael, “Maplehurst’s 130 active COVID cases make it Ontario’s worst jail outbreak of the pandemic,” *Toronto Star*, January 25, 2021, <https://www.thestar.com/news/gta/2021/01/25/maplehursts-130-active-covid-cases-make-it-ontarios-worst-jail-outbreak-of-the-pandemic.html> (accessed May 16, 2021).

<sup>298</sup> Canada Border Services Agency, “Quarterly detention statistics: First and second quarter (Q1-Q2), fiscal year 2020 to 2021,” <https://www.cbsa-asfc.gc.ca/security-securite/detent/qstat-2020-2021-eng.html>.

<sup>299</sup> *Ibid.*

<sup>300</sup> *Ibid.*

<sup>301</sup> *Ibid.*

<sup>302</sup> Interview with immigration and refugee lawyer (name withheld), Toronto, September 2020.

## IV. Impact of Immigration Detention on Individuals at Risk

### Communities of Color

Researchers' interviews with lawyers, advocates, and former detainees, as well as analysis of CBSA data pertaining to detainees' countries of nationality, raise concerns that immigration authorities' decisions regarding detention have a disproportionately negative impact on persons of color. Detainees who are from communities of color, particularly detainees who are Black, appear to be incarcerated for longer periods and they are often detained in provincial jails rather than immigration holding centers.

In a February 2021 interview, CBSA officials indicated that the agency does not collect data disaggregated by race.<sup>303</sup> It only collects data disaggregated by country of nationality.<sup>304</sup> The ability to analyze this issue fully is limited by this lack of data.

According to researchers' analysis of CBSA data obtained through access to information requests, in 2019 the largest portion of immigration detainees held for 90 days or longer, 180 days or longer, and 270 days or longer, were from countries in Africa.<sup>305</sup>

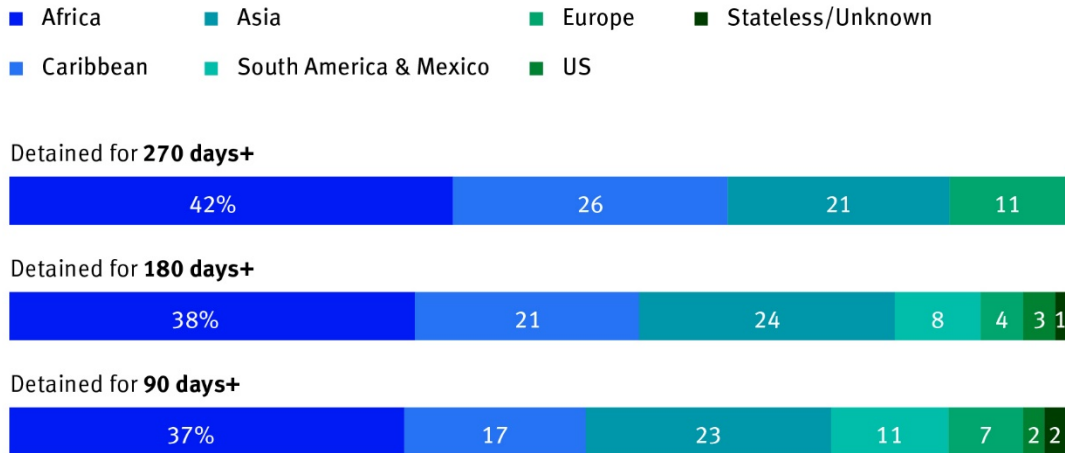
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<sup>303</sup> Interview with Canada Border Services Agency representatives, Toronto, Vancouver, Ottawa, February 1, 2021.

<sup>304</sup> Ibid.

<sup>305</sup> Canada Border Services Agency, untitled, document number 2019-21550, unpublished document on file at Human Rights Watch and Amnesty International (accessed under Access to Information Act), December 10, 2019.

## Proportion of Immigration Detainees in Canada by World Region and Length of Detention in 2019



SOURCE: Canada Border Services Agency (CBSA) data obtained through access to information request

Figure 3: The largest portion of detainees held for three months or longer, six months or longer, and nine months or longer in 2019 were from countries in Africa.

Some lawyers observed that their clients were treated more harshly in the immigration detention system if they were persons of color. A Montreal-based lawyer noted that immigration detainees who are held in provincial jails rather than immigration holding centers tend to be “Black men who are detained on the ground of flight risk.”<sup>306</sup> In Nova Scotia, where immigration detainees are held in provincial jails by default due to the absence of immigration holding centers, one lawyer noted that in her experience CBSA is more likely to invoke grounds of danger to the public for Black detainees, and Black detainees are often required to provide higher bonds to obtain release from detention.<sup>307</sup> A Vancouver-based lawyer also observed that most immigration detainees who are held in provincial jails for months and years are Black men: “They are framed as unruly and dangerous ‘others’ who need to be confined under a broader regime of discipline and

<sup>306</sup> Interview with immigration and refugee lawyer (name withheld), Montreal, December 2020.

<sup>307</sup> Interview with immigration and refugee lawyer (name withheld), Nova Scotia, December 2020.

containment.”<sup>308</sup> Two lawyers in Toronto echoed this observation.<sup>309</sup> Another lawyer in Vancouver described the contrast in CBSA’s treatment of two of her clients:

I had one client—a white man from Australia—who was detained after being charged with assault and overstaying his visa, and CBSA released him without even any reporting requirements.... I had another client, a Black single mother of two from France, with depression and anxiety, and a history of trauma. One of her children was Canadian and she had an ongoing application for permanent residence. CBSA set up surveillance at her home, then detained her as a flight risk because she didn’t answer her door once.... In detention, she was placed in segregation a few times, and wasn’t allowed to wear clothes, only a medical gown.... Because she got detained, her children were at risk of being placed in child welfare custody; she was never given the choice to have her children with her.... After a six-hour hearing, the tribunal released her to a bondsperson and CBSA appealed the release order to the Federal Court. The only explanation [for the different handling of the two cases that] I could think of had to do with the color of her skin.<sup>310</sup>

According to a psychologist with decades of experience researching the impact of immigration detention in Canada, systemic racism becomes more obvious at the macro-structural level: “CBSA imprisons people for non-criminal matters and they happen to be massively from the global south.”<sup>311</sup> A Toronto-based legal representative who has worked with hundreds of immigration detainees over several decades, observed that the majority of immigration detainees are people of color, and the system is “predicated on race.”<sup>312</sup>

In June 2016, CBSA arrested Olajide Ogunye, a Canadian man who was born in Nigeria, outside his home as he was headed to work.<sup>313</sup> The officers told Ogunye they were doing a

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<sup>308</sup> Interview with immigration and refugee lawyer (name withheld), Vancouver, September 2020.

<sup>309</sup> Interviews with immigration and refugee lawyer (name withheld), Toronto, June 2020, and immigration and refugee lawyer (name withheld), Toronto, January 2021.

<sup>310</sup> Interview with immigration and refugee lawyer (name withheld), Vancouver, January 2021.

<sup>311</sup> Interview with Dr. Janet Cleveland, Montreal, October 2020.

<sup>312</sup> Interview with immigration consultant and activist (name withheld), Toronto, June 2020.

<sup>313</sup> Lisa Xing, “Canadian claiming border agency mistakenly detained him for 8 months sues for \$10M,” *CBC News*, June 13, 2018, <https://www.cbc.ca/news/canada/toronto/canadian-citizen-sues-border-services-agency-after-being-detained-eight->

sweep of the area.<sup>314</sup> CBSA detained Ogunye for eight months in two maximum-security provincial jails while the agency verified his identity, even though he had a Canadian citizenship card and Ontario health card.<sup>315</sup> While in detention, Ogunye’s mental health deteriorated and he was placed on suicide watch and given pills for depression.<sup>316</sup> In 2018, Ogunye told CBC News: “They put me through a lot. They destroyed my life.... They destroyed my family.”<sup>317</sup> He sued CBSA for C\$10 million.<sup>318</sup>

According to a complaint before the Canadian Human Rights Commission, in September 2019 CBSA officers stopped Mohamed Duale, a Canadian man who was born in Somalia, at the border as he tried to re-enter the country and subjected him to a battery of questions.<sup>319</sup> When Duale asked why he was being stopped, a CBSA agent allegedly responded: “It’s because of where you were born. You’re Somalian, right?”<sup>320</sup> This was not an isolated complaint against CBSA alleging racist conduct.<sup>321</sup> In October 2020, the National Council of Canadian Muslims released a report detailing concerns regarding CBSA’s racial profiling and calling for independent civilian oversight.<sup>322</sup>

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months-1.4703064 (accessed May 16, 2021). See also Robin Levingson-King, “Locked up in Canada for eight months ‘over name mix-up,’” *BBC News*, June 15, 2018, <https://www.bbc.com/news/world-us-canada-44501138> (accessed May 16, 2021); Leyland Cecco, “Canadian citizen held for months after border agents dismiss papers as fake,” *The Guardian*, June 14, 2018, <https://www.theguardian.com/world/2018/jun/14/canadian-citizen-sues-government-detention> (accessed May 16, 2021); Sean Fine, “Mistaken for an illegal immigrant, Canadian sues after eight-month ordeal,” *The Globe And Mail*, July 17, 2018, <https://www.theglobeandmail.com/canada/article-detained-immigrants-lawsuit-shines-light-on-process-stacked-against/> (accessed May 16, 2021); Vicky Mochama, “Canadian Border Services Agency lacks oversight, but that’s only part of the problem,” *Toronto Star*, June 28, 2018, <https://www.thestar.com/opinion/2018/06/27/canadian-border-services-agency-lacks-oversight-but-thats-only-part-of-the-problem.html> (accessed May 16, 2021). This was not the only time CBSA detained a Canadian citizen: according to data Human Rights Watch and Amnesty International obtained from CBSA, the agency detained a Canadian man for 108 days in 2019 (Canada Border Services Agency, untitled, document number 2019-21550, unpublished document on file at Human Rights Watch and Amnesty International (accessed under Access to Information Act), December 10, 2019).

<sup>314</sup> Ibid.

<sup>315</sup> Ibid.

<sup>316</sup> Ibid.

<sup>317</sup> Ibid.

<sup>318</sup> Ibid.

<sup>319</sup> Shanifa Nasser, “Canadian files complaint after CBSA agent allegedly tells him ‘You’re Somalian’ as reason for questioning,” *CBC News*, 15 October 2020, <https://www.cbc.ca/news/canada/toronto/cbsa-racism-complaint-1.5762676> (accessed May 16, 2021).

<sup>320</sup> Ibid.

<sup>321</sup> Michael Tutton, “More than 100 complaints of racism, rudeness against Canada border officers were founded last year,” *National Post*, September 4, 2018, <https://nationalpost.com/news/canada/travellers-complain-about-rude-disrespectful-canadian-border-officers> (accessed May 16, 2021).

<sup>322</sup> National Council of Canadian Muslims, “NCCM Policy Paper: CBSA Oversight Bill,” October 2020, <https://mkonccmorganizadbkcm.kinstacdn.com/wp-content/uploads/2020/10/CBSA-Policy-Paper-9.pdf> (accessed May 16, 2021). See also Anna Pratt and Sara Thompson, “Chivalry, ‘Race’ and Discretion at the Canadian Border,” *The British Journal of Criminology*, vol. 48, pp. 620–640, July 2008; Aazadeh Madani, “Security, Race, and Risk in the Post 9/11 Era: An Examination of the Experiences of Racialized Populations at the Canadian Border” (MA thesis, Simon Fraser University, 2009).

In June 2020, Canadian Prime Minister Justin Trudeau acknowledged police agencies across the country have a problem with systemic racism but did not reference CBSA specifically: “Systemic racism is an issue right across the country, in all our institutions, including in all our police forces, including in the RCMP [Royal Canadian Mounted Police]. That’s what systemic racism is.”<sup>323</sup>

Most international human rights treaties prohibit discrimination and require parties to take measures to eradicate it.<sup>324</sup> The International Convention on the Elimination of All Forms of Racial Discrimination establishes the obligation to prohibit and eliminate both direct and indirect racial discrimination and ensure that “all public authorities and public institutions, national and local, shall act in conformity with this obligation.”<sup>325</sup>

## Refugee Claimants

The first thing I saw in Canada was jail.... When we mixed with Canadian inmates in jail, they asked us why we are there. They thought we were Taliban. We explained that we are fleeing the Taliban.... I chose Canada because I thought it was welcoming to refugees. I thought Canada was better than this.... We are human like you but we have no country.<sup>326</sup>

– “Omar,” refugee claimant and former immigration detainee held in a Nova Scotia provincial jail upon arrival in Canada in 2017

Immigration detention can have a particularly debilitating impact on refugee claimants.<sup>327</sup> Several former detainees who came to Canada to claim refugee protection reported that they arrived in the country full of hope and relief at the prospect of finally being safe.<sup>328</sup>

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<sup>323</sup> Catharine Tunney, “Systemic racism exists in RCMP, Trudeau argues—after commissioner says she’s ‘struggling’ with the term,” *CBC News*, June 11, 2020, <https://www.cbc.ca/news/politics/rcmp-systemic-racism-lucki-trudeau-1.5607622> (accessed May 16, 2021).

<sup>324</sup> ICESCR, art. 2 (2); ICCPR, art. 2 (1); CEDAW, art. 2; CRC, art. 2 (1); ACHPR, arts. 18 (4) and 28; ACHR, art. 1.

<sup>325</sup> International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), adopted December 21, 1965, G.A. Res. 2106 (XX), annex, 20 U.N. GAOR Supp. (No. 14) at 47, UN Doc. A/6014 (1966), 660 U.N.T.S. 195, entered into force January 4, 1969, ratified by Canada on October 14, 1970, art. 2.

<sup>326</sup> Interview with “Omar,” former immigration detainee (name withheld), Montreal, February 2021.

<sup>327</sup> Janet Cleveland and Cecile Rousseau, “Psychiatric symptoms associated with brief detention of adult asylum seekers in Canada,” *Canadian Journal of Psychiatry*, vol. 58 (2013), pp. 409–16; Branka Agic, Lisa Andermann, Kwame McKenzie, Andrew Tuck, “Refugees in Host Countries: Psychosocial Aspects and Mental Health,” in *An Uncertain Safety* (2018), pp. 187–211.

<sup>328</sup> Interviews with “Diego,” former immigration detainee (name withheld), Ottawa, January 2021, “Idriss,” former immigration detainee (name withheld), Montreal, December 2020, “Daryan,” former immigration detainee (name withheld), Toronto, September 2020, “Tahar,” former immigration detainee (name withheld), Toronto, September 2020, and “Michelle,” former immigration detainee (name withheld), Toronto, February 2021.



One man, who came to Canada from a country in Latin America to seek refugee protection and was later detained, said:

From the first day I arrived in Canada, I had a feeling of being safe.... As soon as I arrived here, I could sleep. I had peace.... I understand CBSA have to do their job, but just treat me like a human being.... You fear for your life and you are only looking for a better chance to continue living, and you find punishment. It's terrible.<sup>329</sup>

"Idriss," a man from an African country, who made a refugee claim upon arriving in Canada and was detained at an immigration holding center, described his interaction with the first two CBSA officers who interviewed him:

One of the officers said to me: "Canada is a free country for Canadians, not for foreigners." He seemed very happy to tell me: "You're going to sleep in jail tonight." The other officers were laughing about this....

Immigration detention changed the way I see Canada. Before I came here, for me Canada was one of the best places in the world. For everyone who fled from persecution, it's the perfect place for everyone who is looking for peace and a better life. But when I saw this, I thought: "All that we hear about Canada is fake, it's just cinema."<sup>330</sup>

Another woman, "Michelle," who was detained upon arriving in Canada and seeking refugee protection, recalled her thoughts as she was placed in solitary confinement:

I felt like killing myself. I felt like the world was ending for me. I wasn't told what was happening, what I did wrong.... At least if someone could tell me what I did wrong ... I thought to myself: "Why can't I just die?" This was after I told [the CBSA officers] everything that happened to me back home, and how I escaped for my life. I tried to explain, and the officer said: 'Okay, okay, I know what you mean'. But she didn't understand me, and she didn't

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<sup>329</sup> Interview with "Diego," former immigration detainee (name withheld), Ottawa, January 2021.

<sup>330</sup> Interview with "Idriss," former immigration detainee (name withheld), Montreal, December 2020.

let me explain.... I couldn't stop crying. I thought: "Maybe I should have stayed back home and died there." It was too much. Before I came to Canada, I didn't know what jail looked like.<sup>331</sup>

A Montreal-based lawyer observed that refugee claimants generally "trust the system when they arrive, and they assume the truth will prevail," but when they are introduced to Canada via detention, "it is always a big shock and it devastates their trust in the system."<sup>332</sup> A Toronto-based service provider and refugee rights advocate noted that detention is especially re-traumatizing for people fleeing abuse, violence, and torture: "From the front door of the country, you are taken to jail."<sup>333</sup> A Montreal-based lawyer recalled a client from Egypt who was fleeing domestic violence and was detained when she arrived in Canada: "Upon release, she just stared at the stars and cried."<sup>334</sup>

Many refugee claimants arrive in Canada having escaped traumatic and heart-wrenching experiences; immigration detention can break their defences. Dr. Janet Cleveland recalled interviewing a young man from Somalia who was held at the Toronto immigration holding center:

The young man, in his early 20s, had clear PTSD [Post Traumatic Stress Disorder]. He witnessed his father being murdered as he tried to prevent [the young man] from being recruited by Al Shabab. At first when he walked into the room [for our meeting], he seemed very calm. But he was having nightmares and night-terrors, and he had already made one suicide attempt. He was in such need of help and support, and instead he was detained. He was trying to hold himself together so on the surface the turmoil was not apparent. An untrained officer would not be able "screen" his mental health difficulties. It was only when the young man felt some trust that he was able to open up and share. I remember thinking how inhumane it was to detain people in these circumstances. They were taking away what little he had left to carry him through.<sup>335</sup>

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<sup>331</sup> Interview with "Michelle," former immigration detainee (name withheld), Toronto, February 2021.

<sup>332</sup> Interview with immigration and refugee lawyer (name withheld), Montreal, December 2020.

<sup>333</sup> Interview with service provider and advocate (name withheld), Toronto, November 2020.

<sup>334</sup> Interview with immigration and refugee lawyer (name withheld), Montreal, January 2021.

<sup>335</sup> Interview with Dr. Janet Cleveland, Montreal, October 2020.

CBSA officers are generally the first Canadian authorities that refugee claimants and other newcomers encounter in Canada. Two refugee advocates told us that many of these early interactions are aggressive, abusive, and even cruel.<sup>336</sup> According to a refugee rights advocate who has worked with hundreds of refugee claimants, many CBSA officers apply pressure on refugee claimants to leave Canada and return to their home countries: “They threaten many people who have no clue about their rights.”<sup>337</sup> This was confirmed by another refugee rights advocate and two Montreal-based lawyers.<sup>338</sup>

According to some refugee claimants, CBSA officers threatened to deport them if they applied for refugee protection or otherwise attempted to stop them from claiming refugee protection. One former detainee in British Columbia recalled a CBSA officer saying to her: “Do you know that we deport 98 percent of the Mexicans that are here in order to apply as a refugee? Get ready to be deported.”<sup>339</sup> Another former detainee, Elmady, who claimed refugee protection in Vancouver, reported that after detailing the reasons he fled to Canada, a CBSA officer accused him of being selfish for having left his wife and young children behind.<sup>340</sup> Two former detainees who claimed refugee protection upon arrival in Canada reported that CBSA officers told them they had no right to seek refugee protection.<sup>341</sup>

Three immigration lawyers based in Toronto, Montreal, and Halifax reported that CBSA officers have pressured some of their clients in detention to waive their rights or withdraw applications that may allow them to remain in the country.<sup>342</sup> One lawyer recalled that a CBSA officer told her client—who had suicidal ideation and symptoms associated with depression—that he would only get out of detention if he were deported from Canada.<sup>343</sup>

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<sup>336</sup> Interviews with service provider and advocate (name withheld), Toronto, November 2020, and refugee and migrant rights advocate (name withheld), Montreal, October 2020.

<sup>337</sup> Interview with service provider and advocate (name withheld), Toronto, November 2020.

<sup>338</sup> Interviews with refugee and migrant rights advocate (name withheld), Montreal, October 2020, immigration and refugee lawyer (name withheld), Montreal, January 2021, and immigration and refugee lawyer (name withheld), Montreal, January 2021.

<sup>339</sup> Interview with “Ana,” former immigration detainee (name withheld), Vancouver, December 2020.

<sup>340</sup> Interview with Abdelrahman Elmady, former immigration detainee, Vancouver, February 2021.

<sup>341</sup> Interviews with “Daryan,” former immigration detainee (name withheld), Toronto, September 2020, and “Tahar,” former immigration detainee (name withheld), Toronto, September 2020.

<sup>342</sup> Interviews with immigration and refugee lawyer (name withheld), Nova Scotia, December 2020, immigration and refugee lawyer (name withheld), Toronto, September 2020, and immigration and refugee lawyer (name withheld), Montreal, January 2021.

<sup>343</sup> Interview with immigration and refugee lawyer (name withheld), Nova Scotia, December 2020.

According to the UN Working Group on Arbitrary Detention, “Detention should not be used as a tool to discourage asylum applications.”<sup>344</sup>

One former immigration detainee, Idriss, observed: “They have to put more humanity at the border. There is no humanity in the detention center. They don’t care about you.... I was depressed. I was lost. I didn’t know what to do. I regretted coming here. I saw other people also suffer.”<sup>345</sup>

## Child Detention and Family Separation

I begged the officers to let me be with my children but they just refused. It will take a long time to take care of my children’s mental health. Being separated from us hurt them very much.... It’s very hard to ease their pain. They haven’t learned yet how to protect themselves because they are very young.... They just keep asking me every day to promise that I won’t disappear and I keep telling them, “Don’t worry, I’ll be here.”<sup>346</sup>

– “Tiffany,” refugee claimant and former immigration detainee held in the Toronto immigration holding center and separated from her children on two occasions in 2018 and 2019

Children are subject to the same legal scheme that governs adult immigration detention in Canada, although adjudicators are required to consider the best interests of the child.<sup>347</sup> Accordingly, children may be placed under detention orders on the same grounds as adults.<sup>348</sup> Children may also be “housed” in detention, even where there are no grounds for detention, in order to avoid separating them from their detained parents.<sup>349</sup> This subset of de facto detainees are subject to the same detention conditions as those under formal detention orders and may include Canadian citizen children.<sup>350</sup> Children who do not

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<sup>344</sup> UN Working Group on Arbitrary Detention, “Revised Deliberation No. 5 on deprivation of liberty of migrants,” [https://www.ohchr.org/Documents/Issues/Detention/RevisedDeliberation\\_AdvanceEditedVersion.pdf](https://www.ohchr.org/Documents/Issues/Detention/RevisedDeliberation_AdvanceEditedVersion.pdf), para. 38.

<sup>345</sup> Interview with “Idriss,” former immigration detainee (name withheld), Montreal, December 2020.

<sup>346</sup> Interview with “Tiffany,” former immigration detainee (name withheld), Toronto, March 2021.

<sup>347</sup> Immigration and Refugee Protection Act, section 60.

<sup>348</sup> Canada Border Services Agency, “ENF 20: Detention,”

<https://www.canada.ca/content/dam/ircc/migration/ircc/english/resources/manuals/enf/enf20-det-en.pdf>, section 6.11.

<sup>349</sup> *Ibid.*, section 6.12.

<sup>350</sup> Hanna Gros and Yolanda Song, “‘No Life for a Child’: A Roadmap to End Immigration Detention of Children and Family Separation,” 2016, International Human Rights Program, University of Toronto’s Faculty of Law, [https://ihrp.law.utoronto.ca/utf\\_l\\_file/count/PUBLICATIONS/Report-NoLifeForAChild.pdf](https://ihrp.law.utoronto.ca/utf_l_file/count/PUBLICATIONS/Report-NoLifeForAChild.pdf) (accessed May 15, 2021); Hanna Gros, “Invisible Citizens: Canadian Children in Immigration Detention,” 2017, International Human Rights Program, University of Toronto’s Faculty of Law, [https://ihrp.law.utoronto.ca/utf\\_l\\_file/count/PUBLICATIONS/Report-InvisibleCitizens.pdf](https://ihrp.law.utoronto.ca/utf_l_file/count/PUBLICATIONS/Report-InvisibleCitizens.pdf) (accessed May 15, 2021).

accompany their detained parents in detention are separated from their parents and may be transferred to child welfare authorities.<sup>351</sup> According to CBSA’s informational document for immigration detainees, whether children are “housed” in detention or separated from their detained parents is informed by CBSA’s assessment of the children’s best interests:

If you have children, the CBSA will carefully consider their best interests, based on the facts of your particular case. A CBSA officer will assess such factors as the availability of alternative childcare arrangements, including your family members; the anticipated length of your detention; and if appropriate accommodation and services would be available to your children. If it is in their best interests, your children will be allowed to stay with you in a CBSA immigration holding centre.... Provincial authorities may be contacted and your child may be placed in the care of provincial child welfare services. If this happens, arrangements may be made for your child to visit you.<sup>352</sup>

In fiscal year 2019-2020, a total of 138 children spent time in detention, including 73 children under the age of 6.<sup>353</sup> This was a 17 percent increase from the previous year, and the vast majority (94 percent) were in Quebec.<sup>354</sup>

It remains unclear how many children are separated from their detained parents because CBSA does not collect this data. According to Action Réfugiés Montréal—the only NGO allowed to visit the Laval immigration holding center on a weekly basis to provide support for detainees<sup>355</sup>—in 2019, at least 182 children were separated from a detained parent in Quebec alone.<sup>356</sup> Over two-thirds of these children were separated from their fathers at the border and sent to a shelter with their mother after the family made a refugee claim.<sup>357</sup> In at least six cases, fathers missed the birth of their child.<sup>358</sup>

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<sup>351</sup> Canada Border Services Agency, “Information for people detained under the *Immigration and Refugee Protection Act*,” 2015, <https://www.cbsa-asfc.gc.ca/publications/pub/bsf5012-eng.pdf> (accessed May 16, 2021), p. 1.

<sup>352</sup> Ibid.

<sup>353</sup> Canada Border Services Agency, “Annual detention, fiscal year 2019 to 2020,” <https://www.cbsa-asfc.gc.ca/security-securite/detent/stat-2019-2020-eng.html>.

<sup>354</sup> Ibid.

<sup>355</sup> Action Réfugiés Montréal, <https://actionr.org/im-a-refugeed-person/detention-program/> (accessed May 16, 2021).

<sup>356</sup> Action Réfugiés Montréal, “Summary Findings: Children Affected by Immigration Detention at the Laval Immigration Holding Centre,” January 2021, unpublished document on file with Human Rights Watch and Amnesty International.

<sup>357</sup> Ibid.

<sup>358</sup> Ibid.

# Number of **Children** in Immigration Detention in Canada Per Year

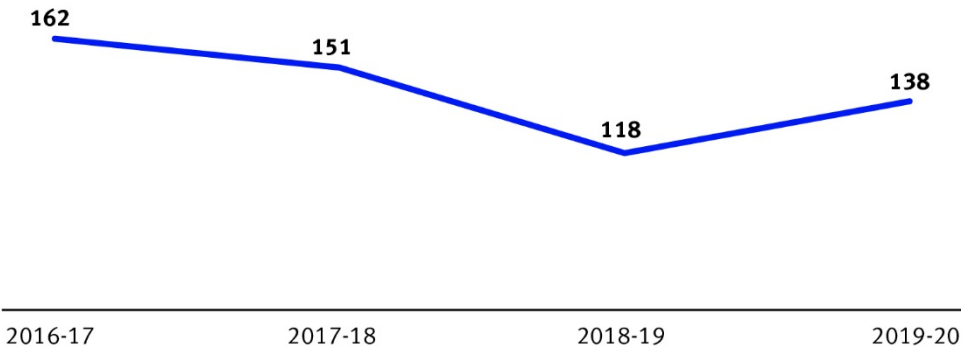


Figure 4: According to publicly available CBSA data, the total number of children in immigration detention in Canada remained largely stable between 2016-17 and 2019-20, despite new policies.

According to a Montreal-based advocate and a Montreal-based lawyer, despite recent policy and regulatory reforms requiring authorities to consider the best interests of the child,<sup>359</sup> there has been no marked change in the way children’s rights are integrated into detention-related decisions.<sup>360</sup> Instead of pursuing alternatives to detention for detained parents, in many cases CBSA has argued that the best interests of the child require housing children with their parents in detention or separating children from their

<sup>359</sup> In November 2017, the Canadian minister of public safety issued a ministerial direction on “Minors in Canada’s Immigration Detention System,” and CBSA issued a “National Directive for the Detention or Housing of Minors.” Both documents acknowledged that the best interests of the child must be a primary consideration in detention-related decisions in which a child is affected. The directives also emphasized the need to preserve family unity in the context of such decisions (see Public Safety Canada, “Ministerial Direction to the Canada Border Services Agency: Minors in Canada’s Immigration Detention System,” November 6, 2017, <https://www.publicsafety.gc.ca/cnt/trnsprnc/ns-trnsprnc/mnstl-drctn-cbsa-en.aspx> (accessed May 16, 2021); Canada Border Services Agency, “National Directive for the Detention or Housing of Minors,” September 26, 2019, <https://www.cbsa-asfc.gc.ca/security-secure/detent/nddhm-dndhm-eng.html> (accessed May 16, 2021). In 2019, Canada amended its Immigration and Refugee Protection Regulations to add “the best interests of a directly affected child” to the list of factors to be considered in detention-related decisions. The regulations now also provide a list of factors that must be considered when determining the best interests of the child (see Immigration and Refugee Protection Regulations, SOR/2002-227, <https://laws-lois.justice.gc.ca/eng/regulations/sor-2002-227/> (accessed May 16, 2021), sections 248 and 248.1). Finally, the Immigration Division of the Immigration and Refugee Board updated its Guideline on Detention to reflect the regulatory amendment (see Immigration and Refugee Board, “Chairperson Guideline 2: Detention,” <https://irb.gc.ca/en/legal-policy/policies/Pages/GuideDiro2.aspx>).

<sup>360</sup> Interviews with service provider and advocate (name withheld), Montreal, October 2020, and immigration and refugee lawyer (name withheld), Montreal, January 2021.

parents.<sup>361</sup> The same Montreal-based advocate noted that there have been regional inconsistencies in CBSA’s assessment of the best interests of the child.<sup>362</sup> One former detainee, who was held at the Toronto immigration holding center and was separated from her young children on two occasions as a result of detention, recalled: “I always begged the officers to please let me have my children with me in detention if I can’t be released; but they said: ‘No, children are not allowed in detention.’”<sup>363</sup>

The detrimental effects of immigration detention on children’s mental health have been extensively documented in Canada and around the world.<sup>364</sup> Studies confirm that detained children experience “high rates of psychiatric symptoms, including self-harm, suicidality, severe depression, regression of milestones, physical health problems, and post-traumatic presentations.”<sup>365</sup> Younger children in detention also experience developmental delays and regression, separation anxiety and attachment issues, and behavioral changes, such as increased aggressiveness.<sup>366</sup> Even brief periods of confinement can be acutely stressful and traumatic for children<sup>367</sup> and the mental health impact can last long after release.<sup>368</sup> Importantly, research shows that family separation also has severe detrimental psychological effects on children.<sup>369</sup>

In 2015, researchers from McGill University reported findings from interviews with 20 families, including children ranging from infants to teenagers, who were held in the Toronto and Laval immigration holding centers.<sup>370</sup> The study found that children reacted to confinement with “extreme distress, fear, and a deterioration of functioning,” exhibiting a range of symptoms both during detention and after release.<sup>371</sup> Parents reported that, while in detention, their children became aggressive and commonly exhibited symptoms of

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<sup>361</sup> Ibid.

<sup>362</sup> Interview with service provider and advocate (name withheld), Montreal, October 2020.

<sup>363</sup> Interview with “Tiffany,” former immigration detainee (name withheld), Toronto, March 2021.

<sup>364</sup> See Rachel Kronick, Cecile Rousseau, Janet Cleveland, “Asylum-Seeking Children’s Experiences of Detention in Canada: A Qualitative Study,” *American Journal of Orthopsychiatry*, vol 85 (2015), pp. 287–294; Ann Lorek et al., “The mental and physical health difficulties of children held within a British immigration detention center: A pilot study,” *Child Abuse & Neglect*, vol. 33 (2009); Zachary Steel et al, “Psychiatric status of asylum seeker families held for a protracted period in a remote detention centre in Australia,” *Australian and New Zealand Journal of Public Health*, vol. 28 (2004).

<sup>365</sup> Ibid.

<sup>366</sup> Ibid.

<sup>367</sup> Ibid.

<sup>368</sup> Ibid.

<sup>369</sup> Ibid.

<sup>370</sup> Rachel Kronick, Cecile Rousseau, Janet Cleveland, “Asylum-Seeking Children’s Experiences of Detention in Canada: A Qualitative Study,” *American Journal of Orthopsychiatry*, vol 85 (2015), pp. 287–294.

<sup>371</sup> Ibid.

separation anxiety and depression, as well as difficulty sleeping and loss of appetite.<sup>372</sup> Following their release from detention, children continued to experience emotional distress for months, including separation anxiety, selective mutism, sleep difficulties, and post-traumatic symptoms.<sup>373</sup> Several children developed a fear of symbols of authority (such as uniforms, police vehicles and institutional buildings) and their academic performance deteriorated.<sup>374</sup>

According to Dr. Rachel Kronick, a McGill University psychiatrist who studies the impact of immigration detention on children and families, detention robs parents of their capacity to function as protective forces for their children.<sup>375</sup> There is an important relationship between parents' agency as self-determining adults and their children's well-being.<sup>376</sup> Detention has a clearly negative impact on children's mental health, whether they are in detention with their parents or separated from them.<sup>377</sup> Children whose parents develop a psychosocial disability are at heightened risk of developing one themselves.<sup>378</sup>

The impact on families of detainees is also immense. According to one Montreal-based immigration lawyer, "Everything changes from one day to the next and many relatives get panicked about never seeing their loved ones again."<sup>379</sup> The same lawyer explained that, unlike many other legal proceedings, "detention is very tangible because all of a sudden your loved ones are taken away."<sup>380</sup>

International bodies have been resolute about the immigration detention of children. The Committee on the Rights of the Child urged that, "The detention of a child because of their or their parent's migration status constitutes a child rights violation and always contravenes the principle of the best interests of the child."<sup>381</sup> The United Nations Working

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<sup>372</sup> Ibid.

<sup>373</sup> Ibid.

<sup>374</sup> Ibid.

<sup>375</sup> Interview with Dr. Rachel Kronick, psychologist and researcher at McGill University, Montreal, October 2020.

<sup>376</sup> Ibid.

<sup>377</sup> Ibid.

<sup>378</sup> Ibid.

<sup>379</sup> Interview with immigration and refugee lawyer (name withheld), Montreal, December 2020.

<sup>380</sup> Ibid.

<sup>381</sup> UN Committee on the Rights of the Child, *Report of the 2012 Day of General Discussion on the Rights of the Child in the Context of International Migration*, September 28, 2012, <https://www.ohchr.org/Documents/HRBodies/CRC/Discussions/2012/DGD2012ReportAndRecommendations.pdf> (accessed May 16, 2021), para 78. See also United Nations Human Rights Council, "Report of the Special Rapporteur on torture and



Group on Arbitrary Detention reaffirmed that the migration status of a child or their parent is insufficient to justify the detention of a child.<sup>382</sup> In fact, according to the working group, “The deprivation of liberty of an asylum-seeking, refugee, stateless or migrant child, including unaccompanied or separated children, is prohibited.”<sup>383</sup> The working group further noted:

Children must not be separated from their parents and/or legal guardians. The detention of children whose parents are detained should not be justified on the basis of maintaining the family unit, and alternatives to detention must be applied to the entire family instead.<sup>384</sup>

The UN special rapporteur on the human rights of migrants and the UN special rapporteur on torture have similarly called on states to preserve the family unit by applying alternatives to detention for the entire family.<sup>385</sup>

In September 2017, the UN Committee on the Elimination of Racial Discrimination recommended that the Canadian government “immediately end the practice of detention of minors.”<sup>386</sup> In December 2019, the committee sent a follow-up letter to Canada noting that the government’s response to this recommendation was “unsatisfactory.”<sup>387</sup> The

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other cruel, inhuman or degrading treatment or punishment, Juan Mendez,” UN Doc. A/HRC/28/68, March 5, 2015, para. 80; UN Working Group on Arbitrary Detention, “Revised Deliberation No. 5 on deprivation of liberty of migrants,”

[https://www.ohchr.org/Documents/Issues/Detention/RevisedDeliberation\\_AdvanceEditedVersion.pdf](https://www.ohchr.org/Documents/Issues/Detention/RevisedDeliberation_AdvanceEditedVersion.pdf), para. 40.

<sup>382</sup> United Nations General Assembly, “Report of the Working Group on Arbitrary Detention: United Nations Basic Principles and Guidelines on Remedies and Procedures on the Right of Anyone Deprived of Their Liberty to Bring Proceedings Before a Court,” UN Doc. A/HRC/30/37, July 6, 2015, para 113; UN Working Group on Arbitrary Detention, “Revised Deliberation No. 5 on deprivation of liberty of migrants,”

[https://www.ohchr.org/Documents/Issues/Detention/RevisedDeliberation\\_AdvanceEditedVersion.pdf](https://www.ohchr.org/Documents/Issues/Detention/RevisedDeliberation_AdvanceEditedVersion.pdf), para. 40.

<sup>383</sup> UN Working Group on Arbitrary Detention, “Revised Deliberation No. 5 on deprivation of liberty of migrants,”

[https://www.ohchr.org/Documents/Issues/Detention/RevisedDeliberation\\_AdvanceEditedVersion.pdf](https://www.ohchr.org/Documents/Issues/Detention/RevisedDeliberation_AdvanceEditedVersion.pdf), para. 11. 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, para. 51.

<sup>384</sup> *Ibid.*, para. 40.

<sup>385</sup> United Nations Human Rights Council, “Report of the Special Rapporteur on the human rights of migrants, Jorge Bustamante,” UN Doc. A/HRC/11/7, May 14, 2009, para. 62; United Nations Human Rights Council, “Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Juan Mendez,” UN Doc. A/HRC/28/68, March 5, 2015, para. 80.

<sup>386</sup> Committee on the Elimination of Racial Discrimination, “Concluding observations on the combined twenty-first to twenty-third periodic reports of Canada,” CERD/C/CAN/CO/21-23, September 13, 2017, para. 34 (b).

<sup>387</sup> Office of the High Commissioner for Human Rights, Letter from the Committee on the Elimination of Racial Discrimination to the government of Canada, CERD/100<sup>th</sup> session/FU/MJA/ks, December 13, 2019,

[https://tbinternet.ohchr.org/Treaties/CERD/Shared%20Documents/CAN/INT\\_CERD\\_FUL\\_CAN\\_40898\\_E.pdf](https://tbinternet.ohchr.org/Treaties/CERD/Shared%20Documents/CAN/INT_CERD_FUL_CAN_40898_E.pdf) (accessed May 16, 2021), p. 3.

committee expressed regret that the federal government “does not prohibit the use of immigration detention of children who, in some cases, continue to be held in detention.”<sup>388</sup>

Canada’s practice of detaining children—whether they are under formal detention orders or “housed” in detention—is a violation of international law as it violates the best interests of the child. The practice of separating children from their detained parents is also not in the child’s best interest and Canada should heed calls from international bodies to apply alternative measures to the whole family.

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<sup>388</sup> Ibid.

## V. CBSA's Sweeping Powers without Independent Civilian Oversight

Canadian law provides authorities immense discretion in the context of immigration detention. CBSA determines where immigration detainees are held, there is no legislative limit to how long detainees can be held, and even once detainees are released, they must abide by conditions of release under threat of being re-detained.

Nearly two decades after its establishment, CBSA remains the only major law enforcement agency in Canada without independent civilian oversight.<sup>389</sup> Over the past several years, recommendations to establish an oversight body have emerged from a range of advocates.<sup>390</sup> Between 2014 and 2020, there have been several unsuccessful attempts to introduce and pass legislation concerning CBSA oversight.<sup>391</sup>

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<sup>389</sup> Dale Smith, "Oversight at the border," *The Canadian Bar Association*, January 28, 2020, <https://nationalmagazine.ca/en-ca/articles/law/hot-topics-in-law/2020/oversight-at-the-border> (accessed May 16, 2021). See also Meghan Potkins, "Calls for more oversight of border agents following death at Calgary airport," *Calgary Herald*, August 10, 2018, <https://calgaryherald.com/news/local-cnews/calls-for-more-oversight-of-cbsa-following-death-at-calgary-airport> (accessed May 16, 2021).

<sup>390</sup> Canadian Association of Refugee Lawyers, British Columbia Civil Liberties Association, Canadian Council for Refugees, Canadian Civil Liberties Association, Open letter to Minister Bill Blair and Minister Marco Mendicino, November 26, 2020, <https://carl-acaadr.ca/wp-content/uploads/2020/11/Open-letter-CBSA-oversight-and-Toure-Nov-26-2020-FINAL.pdf> (accessed May 16, 2021); Stephen Davis, "Critics call for 'robust' oversight of CBSA following CBC reports on staff misconduct," *CBC News*, February 15, 2019, <https://www.cbc.ca/news/politics/canada-border-services-agency-misconduct-1.5021630> (accessed May 16, 2021); Dale Smith, "Border agency oversight bill stall in Parliament," *Law Times*, January 9, 2017, <https://www.lawtimesnews.com/article/border-agency-oversight-bill-stalls-in-parliament-13075/> (accessed May 16, 2021). In a 2015 report, the Standing Senate Committee on National Security and Defence recommended establishing an oversight body for CBSA, as well as an independent, civilian review and complaints body for all CBSA activities. The report noted: "The CBSA is vested with powers of arrest, detention, search and seizure. Its officers can, under law, stop travellers for questioning, take blood and breath samples, search, detain and arrest citizens and non-citizens without a warrant. These responsibilities exceed those of a peace officer. Despite having broad powers, the CBSA is not subject to assessment by an independent review body or by an entity charged with independently processing public complaints" (Standing Senate Committee on National Security and Defence, "Vigilance, Accountability and Security at Canada's Borders," June 2015, <https://sencanada.ca/Content/SEN/Committee/412/secd/rep/rep16jun15a-e.pdf> (accessed May 16, 2021)).

<sup>391</sup> Between 2014 and 2020, four bills have been introduced—two in the House of Commons and two in the Senate—to establish oversight of CBSA (Parliament of Canada, C-3: An Act to amend the Royal Canadian Mounted Police Act and the Canada Border Services Agency Act and to make consequential amendments to other Acts, [www.parl.ca/LegisInfo/BillDetails.aspx?Language=E&billId=10613928](http://www.parl.ca/LegisInfo/BillDetails.aspx?Language=E&billId=10613928) (accessed May 16, 2021); Parliament of Canada, C-98: An Act to amend the Royal Canadian Mounted Police Act and the Canada Border Services Agency Act and to make consequential amendments to other Acts, [www.parl.ca/LegisInfo/BillDetails.aspx?Language=E&billId=10449322](http://www.parl.ca/LegisInfo/BillDetails.aspx?Language=E&billId=10449322) (accessed May 16, 2021); Parliament of Canada, S-205: An Act to amend the Canada Border Services Agency Act (Inspector General of the Canada Border Services Agency) and to make consequential amendments to other Acts, [www.parl.ca/LegisInfo/BillDetails.aspx?Language=E&billId=8063336](http://www.parl.ca/LegisInfo/BillDetails.aspx?Language=E&billId=8063336) (accessed May 16, 2021); Parliament of Canada, S-222: An Act to amend the Canada Border Services Agency Act (Inspector General of the Canada Border Services Agency) and

In the absence of independent civilian oversight, the agency's unchecked exercise of its broad mandate and enforcement powers has repeatedly resulted in human rights violations in the context of immigration detention.

Since 2017, the Canadian government has responded to long-standing issues in immigration detention with several new policies, publicly available statistics, consultations with stakeholders, and regulatory reforms with respect to children in the context of immigration detention.<sup>392</sup> However, these developments have largely failed to address the deeply embedded structural problems that disproportionately affect persons with mental health conditions in immigration detention. Without legislative changes enforcing meaningful safeguards for immigration detainees, the “patchwork” of positive recent practices is unsustainable because in reality these safeguards remain largely dependent on authorities' discretion.<sup>393</sup>

## CBSA Discretion on Where Immigration Detainees are Held

Immigration detainees are held on administrative grounds but Canada subjects them to some of the most restrictive detention conditions in the country and CBSA has the sole authority to decide where immigration detainees are held. In areas that are not proximate to one of the three immigration holding centers in the country, immigration detainees are held in provincial jails by default.<sup>394</sup> However, even in regions near an immigration holding

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to make consequential amendments to other Acts, [www.parl.ca/LegisInfo/BillDetails.aspx?Language=E&billId=6676887](http://www.parl.ca/LegisInfo/BillDetails.aspx?Language=E&billId=6676887) (accessed May 16, 2021). See also Dale Smith, “Oversight at the border,” *The Canadian Bar Association*, January 28, 2020, <https://nationalmagazine.ca/en-ca/articles/law/hot-topics-in-law/2020/oversight-at-the-border> (accessed May 16, 2021); Catharine Tunney, “CBSA won't be getting independent oversight as Bill dies in the Senate,” *CBC News*, June 21, 2019, <https://www.cbc.ca/news/politics/cbsa-bill-oversight-goodale-1.5185025> (accessed May 16, 2021); Catharine Tunney, “Budget includes watchdog agency for border officers,” *CBC News*, March 20, 2019, <https://www.cbc.ca/news/politics/cbsa-independent-watchdog-1.5063543?fbclid=IwARoMl3rffV5UBL1li5XGoKcZVXCZkY8IUVPcdTociVb7zISrPioBarbk78> (accessed May 16, 2021).

<sup>392</sup> Canada Border Services Agency, “National Immigration Detention Framework,” February 14, 2019, <https://www.cbsa-asfc.gc.ca/security-secureite/detent/nidf-cndi-eng.html> (accessed May 16, 2021); Canada Border Services Agency, “Alternatives to detention: Questions and Answers,” July 24, 2018, <https://www.cbsa-asfc.gc.ca/security-secureite/detent/qa-qr-eng.html> (accessed May 16, 2021); Canada Border Services Agency, “Annual Detention Statistics – 2012-2019,” August 20, 2019, <https://www.cbsa-asfc.gc.ca/security-secureite/detent/stat-2012-2019-eng.html> (accessed May 16, 2021); Public Safety Canada, “Ministerial Direction to the Canada Border Services Agency: Minors in Canada's Immigration Detention System,” November 6, 2017, <https://www.publicsafety.gc.ca/cnt/trnsprnc/ns-trnsprnc/mnstrl-drctn-cbsa-en.aspx> (accessed May 16, 2021); Canada Border Services Agency, “National Directive for the Detention or Housing of Minors,” September 26, 2019, <https://www.cbsa-asfc.gc.ca/security-secureite/detent/nddhm-dndhm-eng.html> (accessed May 16, 2021); Immigration and Refugee Protection Regulations, s 248 and s 248.1; Immigration and Refugee Board, “Chairperson Guideline 2: Detention,” <https://irb.gc.ca/en/legal-policy/policies/Pages/GuideDiroz.aspx>.

<sup>393</sup> Interview with refugee and migrant rights advocate (name withheld), Montreal, October 2020.

<sup>394</sup> Interview with Canada Border Services Agency representatives, Toronto, Vancouver, Ottawa, February 1, 2021.

center—in Toronto, Laval, or Surrey—CBSA may still hold immigration detainees in provincial jails if the agency determines that a detainee’s behavior “cannot be managed within an IHC [immigration holding center],”<sup>395</sup> or if the nearest immigration holding center has reached capacity of 85 percent or above.<sup>396</sup> CBSA acknowledged in its 2020-21 Departmental Plan that “the Agency faces the potential for nationally inconsistent detention conditions due to its reliance on provincial correctional facilities.”<sup>397</sup>

Not only does CBSA have the sole authority to decide where immigration detainees are held, there is also no legal standard guiding CBSA’s decision to hold a detainee in a provincial jail rather than an immigration holding center. Instead, this is an administrative decision made on the basis of an opaque risk assessment called the National Risk Assessment for Detention (NRAD).<sup>398</sup> The NRAD consists of a two-page form produced by CBSA that lays out “risk and vulnerability factors” with corresponding points to produce a score, which officers use to determine whether a detainee is to be held in a provincial jail or an immigration holding center.<sup>399</sup>

Immigration detainees have no means to challenge these risk assessments or the decisions regarding their placement at detention review hearings.<sup>400</sup> Lawyers across the country confirmed that NRADs are often not disclosed in detention review hearings and there is no opportunity to challenge these assessments before the tribunal.<sup>401</sup> Lawyers, designated representatives, advocates, and service providers across the country reported

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<sup>395</sup> Canada Border Services Agency, “Detentions: Facilities used for immigration detention,” December 10, 2020, <https://www.cbsa-asfc.gc.ca/security-securite/detent/menu-eng.html> (accessed May 16, 2021).

<sup>396</sup> Canada Border Services Agency, “ENF 20: Detention,”

<https://www.canada.ca/content/dam/ircc/migration/ircc/english/resources/manuals/enf/enf20-det-en.pdf>, section 11.3.

<sup>397</sup> Canada Border Services Agency, “2020-21 Departmental Plan,” <https://www.cbsa-asfc.gc.ca/agency-agence/reports-rapports/rpp/2020-2021/report-rapport-eng.pdf>.

<sup>398</sup> *Ebrahim Toure v. Minister of Public Safety*, 2017 ONSC 5878, paras. 71-72. See also Stephanie J. Silverman & Esra Stephanie Kaytaz, “Examining the ‘National Risk Assessment for Detention’ process: an intersectional analysis of detaining ‘dangerousness’ in Canada”, *Journal of Ethnic and Migration Studies*, vol. (2020).

<sup>399</sup> Canada Border Services Agency, “ENF 20: Detention,”

<https://www.canada.ca/content/dam/ircc/migration/ircc/english/resources/manuals/enf/enf20-det-en.pdf>, section 9.5.

<sup>400</sup> *Ebrahim Toure v. Minister of Public Safety*, 2017 ONSC 5878, at paras 71-72.

<sup>401</sup> Interviews with immigration and refugee lawyer (name withheld), Montreal, December 2020, immigration and refugee lawyer (name withheld), Vancouver, November 2020, immigration and refugee lawyer (name withheld), Toronto, September 2020, immigration and refugee lawyer (name withheld), Toronto, August 2020, immigration and refugee lawyer (name withheld), Nova Scotia, December 2020, immigration and refugee lawyer (name withheld), Vancouver, November 2020, immigration and refugee lawyer (name withheld), Nova Scotia, January 2021, and three immigration and refugee lawyers (names withheld), Montreal, January 2021.

that CBSA’s risk analysis is not transparent and it is unclear why some detainees are placed in provincial jails and others in immigration holding centers.<sup>402</sup>

Between April 2017 and March 2020, more than a fifth of immigration detainees—about 5,400<sup>403</sup>—were held in 78 provincial jails across Canada alongside criminally charged and convicted detainees.<sup>404</sup> Through access to information requests, researchers have obtained bilateral agreements between the federal government and the provinces of British Columbia, New Brunswick, Nova Scotia, Quebec, Ontario, and Saskatchewan, for the purpose of holding immigration detainees in provincial jails.<sup>405</sup> CBSA confirmed to researchers that an additional agreement is in place with Alberta, which has not been released. In the remaining provinces, agency representatives said CBSA has “informal agreements” to hold immigration detainees in provincial jails.<sup>406</sup>

Immigration detainees who are held in provincial jails remain within the legal jurisdiction of CBSA as the enforcement authority but the agency relinquishes control over the conditions of detention to which immigration detainees are subjected. In its 2020-21 Departmental Plan, CBSA indicated: “The Agency has limited control over detention conditions in non-CBSA facilities [provincial jails], which poses challenges in ensuring a

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<sup>402</sup> Interviews with designated representative (name withheld), Toronto, November 2020, immigration and refugee lawyer (name withheld), Montreal, December 2020, service provider and advocate (name withheld), Toronto, November 2020, and immigration and refugee lawyer (name withheld), Vancouver, November 2020. There is also confusion as to who makes these decisions; while CBSA uses the NRAD to make a referral decision, operational guidance stipulates that “IHC managers are the ultimate decision makers” (see Canada Border Services Agency, “ENF 20: Detention,” <https://www.canada.ca/content/dam/ircc/migration/ircc/english/resources/manuals/enf/enf20-det-en.pdf>, section 9.5). This makes it impossible to ascertain clear reasoning behind placing immigration detainees in provincial jails rather than immigration holding centers.

<sup>403</sup> Canada Border Services Agency, “Annual detention, fiscal year 2019 to 2020,” <https://www.cbsa-asfc.gc.ca/security-securite/detent/stat-2019-2020-eng.html>; Canada Border Services Agency, “Annual Detention Statistics – 2012-2019,” <https://www.cbsa-asfc.gc.ca/security-securite/detent/stat-2012-2019-eng.html>.

<sup>404</sup> Canada Border Services Agency, “Days Detained FY 2017-2018, 2018-2019 & 2019-2020 by Facility and Region,” document number 2019-21550, undated, unpublished document on file at Human Rights Watch and Amnesty International (accessed under Access to Information Act).

<sup>405</sup> Unpublished documents on file at Human Rights Watch and Amnesty International (accessed under Freedom of Information and Protection of Privacy Act). In a February 2021 interview with Human Rights Watch and Amnesty International, Canada Border Services Agency representatives indicated the agency has legal contracts with five provinces: Ontario, Quebec, Alberta, Nova Scotia, and British Columbia (Interview with Canada Border Services Agency representatives, Toronto, Vancouver, Ottawa, February 1, 2021). See also Canada Border Services Agency, “ENF 20: Detention,” <https://www.canada.ca/content/dam/ircc/migration/ircc/english/resources/manuals/enf/enf20-det-en.pdf>, section 7. Plans to negotiate memoranda of understanding with the provinces have existed since at least 2009 (Parliament of Canada, “Government Response to the Report of the Standing Committee on Public Accounts: Chapter 7, Detention and Removal of Individuals – Canada Border Services Agency of the May 2008 Report of the Auditor General of Canada,” undated, [www.ourcommons.ca/DocumentViewer/en/40-2/PACP/report-9/response-8512-402-71](http://www.ourcommons.ca/DocumentViewer/en/40-2/PACP/report-9/response-8512-402-71) (accessed May 16, 2021)).

<sup>406</sup> Interview with Canada Border Services Agency representatives, Toronto, Vancouver, Ottawa, February 1, 2021.

common standard of care.”<sup>407</sup> CBSA further indicated that it has no control over whether immigration detainees are held in maximum-security sections of provincial jails, or other lower security sections: “Provincial facilities conduct internal risk management and placement assessments, which may result in internal classification placement decisions within sections of the institutions below the maximum security level.”<sup>408</sup> In Ontario and Quebec, immigration detainees in provincial jails may be held in maximum-security sections of those facilities at least in part because of their legal status as immigration detainees.<sup>409</sup> The Prince Edward Island Community and Correctional Services Policy and Procedures indicates that, “In dealing with a person detained under IRPA [immigration detainee], Correctional staff must bear in mind that while no criminal charges may be involved, such a person must be considered a security risk.”<sup>410</sup>

Holding immigration detainees in provincial jails is costly. The federal government’s agreements with each province stipulate that the former will pay a “per diem” rate for each day an immigration detainee is held in a provincial jail.<sup>411</sup> The agreement with Ontario also stipulates an additional 20 percent of the per diem rate “to cover administrative and overhead amounts related to the accommodation of detainees.”<sup>412</sup> According to data that researchers obtained through access to information requests, CBSA pays each province a different per diem rate to hold immigration detainees in provincial jails.<sup>413</sup>

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<sup>407</sup> Canada Border Services Agency, “2020-21 Departmental Plan,” <https://www.cbsa-asfc.gc.ca/agency-agence/reports-rapports/rpp/2020-2021/report-rapport-eng.pdf>.

<sup>408</sup> Canada Border Services Agency, unpublished document on file with Human Rights Watch and Amnesty International, April 2021.

<sup>409</sup> In Quebec, among the factors listed as requiring heightened security classification are being the subject of an immigration detention order or pending deportation (Ministère de la Sécurité publique Québec, “Classement d’une personne incarcérée dans un établissement de détention, October 19, 2016, accessed through FIPPA [N/Ref.: 123144]). In Ontario, “immigration status” is among the factors considered in detainee classification assessment (Ontario Ministry of the Solicitor General, “Correctional Services,” August 19, 2020, <https://www.mcscs.jus.gov.on.ca/english/Corrections/Policiesandguidelines/Inmateclassification.html> (accessed May 16, 2021)).

<sup>410</sup> Unpublished document on file at Human Rights Watch and Amnesty International, document number 2020-156/157 (accessed under Freedom of Information and Protection of Privacy Act).

<sup>411</sup> Unpublished documents on file at Human Rights Watch and Amnesty International (accessed under Freedom of Information and Protection of Privacy Act).

<sup>412</sup> Unpublished document on file at Human Rights Watch and Amnesty International (accessed under Freedom of Information and Protection of Privacy Act).

<sup>413</sup> Unpublished documents on file at Human Rights Watch and Amnesty International (accessed under Freedom of Information and Protection of Privacy Act).

Province	Per diem rate (in Canadian dollars)
British Columbia	C\$235.00
Manitoba	C\$293.60
New Brunswick	C\$231.33 for men, C\$375.16 for women
Nova Scotia	C\$392.30
Prince Edward Island	C\$288.33
Quebec	C\$270.28 for men, C\$301.18 for women
Saskatchewan	C\$203.74

Data from the federal government indicates that the cost of CBSA’s detention programs increased to C\$71.38 million in fiscal year 2019-20 from C\$65.26 million in 2018-19.<sup>444</sup>

According to the UN Working Group on Arbitrary Detention, conditions of detention “must be humane, appropriate and respectful, noting the non-punitive character of the detention in the course of migration proceedings.”<sup>445</sup> The working group further noted:

The detention of asylum seekers or other irregular migrants must not take place in facilities such as police stations, remand institutions, prisons and other such facilities since these are designed for those within the realm of the criminal justice system. The mixing of migrants and other detainees who are held under the remit of the criminal justice system must not take place.<sup>446</sup>

In 2016, the chief commissioner of the Ontario Human Rights Commission stated: “There is a fundamental, systemic problem with using provincial correctional facilities designed for persons detained under the Criminal Code, to detain immigrants who are neither

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<sup>444</sup> Government of Canada, “Infographic for Canada Border Services Agency,” undated, [www.tbs-sct.gc.ca/ems-sgd/edb-bdd/index-eng.html#orgs/dept/26/infograph/financial](http://www.tbs-sct.gc.ca/ems-sgd/edb-bdd/index-eng.html#orgs/dept/26/infograph/financial) (accessed May 16, 2021).

<sup>445</sup> UN Working Group on Arbitrary Detention, “Revised Deliberation No. 5 on deprivation of liberty of migrants,” [https://www.ohchr.org/Documents/Issues/Detention/RevisedDeliberation\\_AdvanceEditedVersion.pdf](https://www.ohchr.org/Documents/Issues/Detention/RevisedDeliberation_AdvanceEditedVersion.pdf), para. 38.

<sup>446</sup> *Ibid.*, para. 44.



criminally-charged nor serving a sentence.”<sup>417</sup> Canada’s practice of incarcerating immigration detainees in provincial jails is a violation of international human rights law as incarceration in these facilities is inherently punitive in nature and not suited nor permitted under international standards for use in immigration detention.

## Indefinite Detention

With a criminal sentence, your release date, that’s the one thing you hold on to.... It’s the one firm thing you can count on. When you don’t have that, you just spiral.... The unknown in immigration detention, it’s mental cruelty, torture. It’s beyond a human rights violation.<sup>418</sup>

– “Jason,” former immigration detainee held in an Ontario provincial jail in 2020

Canada does not have a legislative limit on the length of time immigration detainees can be held. Since 2016, Canada has held more than 300 immigration detainees for longer than a year.<sup>419</sup>

In many cases, regular detention review hearings fail to provide an adequate safeguard against indefinite detention because authorities may repeatedly consider alternatives to detention—as required by law<sup>420</sup>—but refuse to order release. While the law also requires authorities to consider the “length of detention” as a factor in detention-related decisions,<sup>421</sup> there is no specific standard as to what is considered to be a lengthy detention. One lawyer based in Toronto observed: “Until someone has been detained for months, authorities do not consider it to be a lengthy detention.”<sup>422</sup>

In some cases, detainees cannot be removed from Canada because their country of nationality cannot be ascertained, they may be stateless, or their country of nationality refuses to recognize them as nationals or issue them travel documents. Such bureaucratic impasses—which are outside the control of detainees—can result in prolonged detention

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<sup>417</sup> Renu Mandhane, “OHRC calls for reforms to immigrant detention system,” [http://www.ohrc.on.ca/en/news\\_centre/ohrc-calls-reforms-immigrant-detention-system](http://www.ohrc.on.ca/en/news_centre/ohrc-calls-reforms-immigrant-detention-system).

<sup>418</sup> Interview with “Jason,” former immigration detainee (name withheld), Toronto, December 2020.

<sup>419</sup> Immigration and Refugee Board of Canada, “Detention Reviews by Length of Detention,” February 5, 2021, [https://irb-cisr.gc.ca/en/statistics/detentions-reviews/Pages/detenLen.aspx#inline\\_content](https://irb-cisr.gc.ca/en/statistics/detentions-reviews/Pages/detenLen.aspx#inline_content) (accessed May 16, 2021).

<sup>420</sup> Immigration and Refugee Protection Regulations, section 248.

<sup>421</sup> *Ibid.*

<sup>422</sup> Interview with immigration and refugee lawyer (name withheld), Toronto, September 2020.

and can last for years. The longest instance of detention in Canada was 11 years and involved a man with an apparent mental health condition, who was held in a provincial jail, and whose identity the government could not establish.<sup>423</sup>

Former immigration detainees overwhelmingly reported that the most devastating aspect of detention they had to endure was its open-ended length and the sheer uncertainty of when it would end. One former detainee observed: “When there is no end-date in sight, the anxiety that causes, coupled with the anxiety anyone would feel in that situation ... that causes a lot of mental strain. A lot of people think about killing themselves. You literally don’t know when you’re going to get out. That was the worst part [of detention].”<sup>424</sup>

According to the UN Working Group on Arbitrary Detention, “A maximum detention period in the course of migration proceedings must be set by legislation ... Upon the expiry of the detention period set by law, the detained person must automatically be released.”<sup>425</sup> The UN Human Rights Committee noted: “The inability of a State party to carry out the expulsion of an individual because of statelessness or other obstacles does not justify indefinite detention.”<sup>426</sup> In its 2015 review of Canada’s implementation of the International Covenant on Civil and Political Rights, the UN Human Rights Committee expressed concern that “individuals who enter [Canada] irregularly may be detained for an unlimited period of time” and stated that Canada should ensure “a reasonable time limit for detention is set.”<sup>427</sup> Canada’s practice of incarcerating immigration detainees without a legislative limit to the length of detention is a violation of international law.

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<sup>423</sup> Geoffrey York, “Freed from Canadian Detention, South African Man Left in Limbo,” *The Globe and Mail*, June 14, 2016, <https://www.theglobeandmail.com/news/world/freed-from-canadian-detention-south-african-man-left-in-limbo/article30462108/> (accessed May 16, 2021); Adrienne Arseneault, “Mystery man’s identity still murky after decade in Canadian detention,” *CBC News*, June 5, 2015, [https://www.cbc.ca/news/world/mystery-man-s-identity-still-murky-after-decade-in-canadian-detention-1.3100781?utm\\_source=www.immigrantscanada.com&utm\\_medium=twitter.com/immigrantsnews](https://www.cbc.ca/news/world/mystery-man-s-identity-still-murky-after-decade-in-canadian-detention-1.3100781?utm_source=www.immigrantscanada.com&utm_medium=twitter.com/immigrantsnews) (accessed May 16, 2021).

<sup>424</sup> Interview with “John,” former immigration detainee (name withheld), Toronto, November 2020.

<sup>425</sup> UN Working Group on Arbitrary Detention, “Revised Deliberation No. 5 on deprivation of liberty of migrants,” [https://www.ohchr.org/Documents/Issues/Detention/RevisedDeliberation\\_AdvanceEditedVersion.pdf](https://www.ohchr.org/Documents/Issues/Detention/RevisedDeliberation_AdvanceEditedVersion.pdf), para. 25.

<sup>426</sup> UN Human Rights Committee, General Comment No. 35, Article 9 (Liberty and security of the person), UN Doc. CCPR/C/GC/35 (2014), para. 18.

<sup>427</sup> UN Human Rights Committee, “Concluding observations on the sixth periodic report of Canada,” August 13, 2015, CCPR/C/CAN/CO/6, <https://undocs.org/en/CCPR/C/CAN/CO/6> (accessed May 16, 2021), para. 12.

## Alternatives to Detention

Canadian law requires immigration authorities to consider all reasonable alternatives to detention (ATDs) before making a detention-related decision.<sup>428</sup> CBSA officers and Immigration Division adjudicators have broad discretion to impose any conditions they consider necessary to release an individual from detention.<sup>429</sup> The IRB Chairperson's Guideline on Detention lists conditions adjudicators may impose on detainees upon release from detention, such as abiding by a curfew, refraining from using a cellphone or a computer, having no functioning internet connection at home, authorizing CBSA or designated personnel to enter the home, residing at community housing or a rehabilitation center, remaining within or outside a particular geographic area, and wearing an electronic bracelet to track movements.<sup>430</sup>

Conditions of release may also include a financial deposit (bond) or guarantee.<sup>431</sup> In such cases, authorities require the bondsperson or guarantor to provide their current address and notify them of any change of address.<sup>432</sup>

In some cases, authorities refuse to release immigration detainees unless a third-party organization agrees to supervise them in the community.<sup>433</sup> In 2018, CBSA expanded the availability of such programs,<sup>434</sup> contracting new partnerships with the John Howard

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<sup>428</sup> Immigration and Refugee Protection Regulations, section 248 (e). See also Canada Border Services Agency, "ENF 20: Detention," <https://www.canada.ca/content/dam/ircc/migration/ircc/english/resources/manuals/enf/enf20-det-en.pdf>, section 4.2; Immigration and Refugee Board, "Chairperson Guideline 2: Detention," <https://irb.gc.ca/en/legal-policy/policies/Pages/GuideDiro2.aspx>.

<sup>429</sup> Immigration and Refugee Protection Act, sections 56(1) and 58(3).

<sup>430</sup> Immigration and Refugee Board, "Chairperson Guideline 2: Detention," <https://irb.gc.ca/en/legal-policy/policies/Pages/GuideDiro2.aspx>.

<sup>431</sup> *Ibid.*

<sup>432</sup> Immigration and Refugee Protection Regulations, section 48.

<sup>433</sup> Immigration and Refugee Board of Canada, "Chairperson Guideline 2: Detention," <https://irb.gc.ca/en/legal-policy/policies/Pages/GuideDiro2.aspx>, section 3. See also Canada Border Services Agency, "Community Case Management and Supervision," July 24, 2018, <https://www.cbsa-asfc.gc.ca/security-securite/detent/ccms-gccs-eng.html> (accessed May 16, 2021); Canada Border Services Agency, "ENF 34: Alternatives to Detention Program," June 22, 2018, <https://www.canada.ca/content/dam/ircc/migration/ircc/english/resources/manuals/enf/enf34-eng.pdf> (accessed May 21, 2021).

<sup>434</sup> Government of Canada, "Alternatives to Detention Program: Backgrounder," July 24, 2018, <https://www.canada.ca/en/border-services-agency/news/2018/07/alternatives-to-detention-program.html> (accessed May 16, 2021).

Society of Canada and the Salvation Army to create the Community Case Management and Supervision (CCMS) program and renewing its contract with the Toronto Bail Program.<sup>435</sup>

Failure of former immigration detainees to abide by any conditions of release—whether by accident or with intention—may result in re-arrest and detention. Prior to release, authorities fingerprint immigrant detainees and seize their identity documents.<sup>436</sup>

### *Monitoring and Surveillance in the Community*

According to an academic at the University of Toronto who studies immigration detention in Canada and Europe, alternatives to detention “ensure that people continue to be closely monitored for an indefinite period, and this formalizes a system of supervision even following release from detention.”<sup>437</sup> One advocate who has represented and worked with hundreds of immigration detainees observed that ATDs increase the level of intrusion and surveillance in migrant and refugee communities.<sup>438</sup> According to the same advocate, many former detainees are subject to ATD programs and reporting conditions for years while the government processes their refugee claims or immigration applications.<sup>439</sup>

Strict conditions of release—such as weekly reporting to CBSA, curfews, and requirements to live at a specific address and to wear an electronic monitoring ankle bracelet—render people at risk and terrified of being re-detained, even if they cannot be legally deported. Four lawyers observed that many of their clients are fearful of CBSA officers long after they are released from detention and strict conditions of release inhibit them from moving on with their lives.<sup>440</sup> One lawyer described a client who was formerly detained and has to report to CBSA regularly: “[He] tells me that in the week leading up to his reporting he is so stressed he can barely even think at work.”<sup>441</sup> Another lawyer described a client still under weekly reporting requirements three years after he was released from detention: “He feels

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<sup>435</sup> Canada Border Services Agency, “Community Case Management and Supervision,” July 24, 2018, <https://www.cbsa-asfc.gc.ca/security-securite/detent/ccms-gccs-eng.html> (accessed May 16, 2021).

<sup>436</sup> *Ibid.*

<sup>437</sup> Interview with Dr. Ana Ballesteros-Pena, Toronto, November 2020.

<sup>438</sup> Interview with immigration consultant and activist (name withheld), Toronto, June 2020.

<sup>439</sup> *Ibid.*

<sup>440</sup> Interviews with immigration and refugee lawyer (name withheld), Montreal, December 2020, immigration consultant and activist (name withheld), Toronto, June 2020, immigration and refugee lawyer (name withheld), Toronto, June 2020, and immigration and refugee lawyer (name withheld), Ottawa, December 2020.

<sup>441</sup> Interview with immigration and refugee lawyer (name withheld), Toronto, June 2020.

like his dignity is being stripped away, he feels like he is always under their thumb and that the punishment just continues.”<sup>442</sup>

According to a Toronto-based advocate, the use of bondspersons also extends the arm of the enforcement agency into people’s homes and communities, such that immigration detainees’ loved ones are required to supervise them on behalf of CBSA.<sup>443</sup> This can transform familial and communal support systems into tense environments and make it impossible for people to live independently. One lawyer noted that her client’s release conditions prohibit him from even going for a walk around the block on his own.<sup>444</sup> The former detainee reflected on the illusion of liberty when living under such strict conditions of release: “I admire the dogs here, they get to go for walks every day.”<sup>445</sup>

Alternatives to detention should not be used as alternative forms of detention; nor should alternatives to detention become alternatives to release.<sup>446</sup> According to the special rapporteur on the human rights of migrants, “Non-custodial measures must conform to relevant principles of international law, including the principles of non-discrimination, necessity and proportionality and should not prevent individuals from exercising their other human rights, including the right to health.”<sup>447</sup>

### *Barriers to Release for Detainees with Psychosocial Disabilities*

Immigration detainees with psychosocial disabilities can face additional barriers to release from detention. For immigration detainees with psychosocial disabilities, release from detention may depend on them enrolling in residential treatment facilities. This situation raises concerns that immigration detention is simply being substituted for non-voluntary medical confinement and forced treatment in violation of their rights, including to privacy and bodily integrity.

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<sup>442</sup> Interview with immigration and refugee lawyer (name withheld), Toronto, June 2020.

<sup>443</sup> Interview with immigration consultant and activist (name withheld), Toronto, June 2020.

<sup>444</sup> Interview with immigration and refugee lawyer (name withheld), Ottawa, December 2020.

<sup>445</sup> Interview with “Diego,” former immigration detainee (name withheld), Ottawa, January 2021.

<sup>446</sup> UN Human Rights Council, “Report of the Special Rapporteur on the human rights of migrants, François Crépeau,” April 2, 2012, UN Doc. A/HRC/20/24, <https://undocs.org/A/HRC/20/24>, (access May 16, 2021), para. 53: “Some non-custodial measures may be so restrictive, either by themselves or in combination with other measures, that they can amount to alternative forms of detention, instead of alternatives to detention.”

<sup>447</sup> *Ibid.*, para. 54.

In any case, residential treatment facilities have limited spots.<sup>448</sup> The lack of adequate community supports and equal treatment for people with psychosocial disabilities is a long-standing issue that affects Canadian and non-Canadian citizens alike.<sup>449</sup> But as one Toronto-based lawyer observed: “For many non-citizens with psychosocial disabilities, the solution [to insufficient community services] seems to be to hold them in immigration detention.”<sup>450</sup>

Lack of healthcare coverage in communities can also become a barrier to release for immigration detainees with psychosocial disabilities. According to an Ottawa-based lawyer, “The question of who is going to pay for this treatment always comes up.”<sup>451</sup> Two lawyers who have represented dozens of immigration detainees reported that in cases involving individuals with psychosocial disabilities, CBSA has argued for continued detention because they have access to medication while in custody, but not in the community.<sup>452</sup>

According to six lawyers, release from detention is also often delayed because the task of crafting release plans often falls on lawyers, and in some cases, the tribunal expects release plans to include highly inaccessible third-party organizations that provide residential treatment programs or supervision.<sup>453</sup> Crafting release plans that involve residential treatment is particularly challenging because the agencies implementing these programs often require eligibility assessments to be completed as a pre-requisite to enrolling in the program, and it is impossible to conduct these assessments in

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<sup>448</sup> Interviews with immigration and refugee lawyer (name withheld), Toronto, September 2020, and immigration and refugee lawyer (name withheld), Vancouver, November 2020.

<sup>449</sup> Ontario Human Rights Commission, “Minds that Matter: Report on the consultation on human rights, mental health and addictions,” 2012, <http://www.ohrc.on.ca/en/minds-matter-report-consultation-human-rights-mental-health-and-addictions> (accessed May 16, 2021). See also Ontario Human Rights Commission, “Policy on preventing discrimination based on mental health disabilities and addictions,” June 18, 2014, <http://www.ohrc.on.ca/en/policy-preventing-discrimination-based-mental-health-disabilities-and-addictions> (accessed May 16, 2021).

<sup>450</sup> Interview with immigration and refugee lawyer (name withheld), Toronto, September 2020.

<sup>451</sup> Interview with immigration and refugee lawyer (name withheld), Ottawa, December 2020.

<sup>452</sup> *Ibid.*; Interview with immigration and refugee lawyer (name withheld), Ottawa, November 2020. In cases where detainees require medication, CBSA’s Enforcement Manual instructs officers to consider issues of accessibility of medication upon release (Canada Border Services Agency, “ENF 20: Detention,”

<https://www.canada.ca/content/dam/ircc/migration/ircc/english/resources/manuals/enf/enf20-det-en.pdf>, section 6.4).

<sup>453</sup> Interviews with immigration and refugee lawyer (name withheld), Nova Scotia, October 2020, immigration and refugee lawyer (name withheld), Ottawa, December 2020, immigration and refugee lawyer (name withheld), Vancouver, November 2020, immigration and refugee lawyer (name withheld), Toronto, June 2020, immigration and refugee lawyer (name withheld), Montreal, January 2021, immigration and refugee lawyer (name withheld), Nova Scotia, January 2021.

detention.<sup>454</sup> One Ottawa-based lawyer noted: “I am not trained to navigate residential treatment programs to craft release plans, but a lot of my job involves begging for ATDs.”<sup>455</sup> A Montreal-based lawyer echoed the same.<sup>456</sup>

CBSA’s gatekeeper role with respect to access to alternatives to detention also poses additional challenges for immigration detainees with mental health conditions.

Services delivered by CBSA’s community partners include reporting requirements, health and mental health support, problematic substance use support, referrals to employment and housing support, referrals to family and child programs, and mandatory residency.<sup>457</sup> These community partners are contractually obligated to “consider all candidates referred to them by the CBSA or the IRB.”<sup>458</sup> However, in a March 2021 interview with researchers, the deputy chairperson of the IRB’s Immigration Division stated: “[Tribunal adjudicators] can ask CBSA to consider placement [with a CCMS community partner] but they will not contact these programs themselves. They will ask CBSA to explore this and report back [at a subsequent hearing].”<sup>459</sup> Six lawyers and one advocate from different parts of the country reported that CBSA’s CCMS partners are exceedingly limited in the number of detainees they can take on and there is a significant issue with CBSA playing the role of gatekeeper.<sup>460</sup> In response to researchers’ inquiry as to the CCMS program’s capacity, the agency indicated that there is a total of 19 “High Intervention Beds” in mandatory residency programs across the country.<sup>461</sup>

Furthermore, in a February 2021 interview with researchers, CBSA officials indicated that detainees must be “stable” before they can be released into CBSA-contracted community

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<sup>454</sup> Interview with immigration and refugee lawyer (name withheld), Toronto, September 2020.

<sup>455</sup> Interview with immigration and refugee lawyer (name withheld), Ottawa, December 2020.

<sup>456</sup> Interview with immigration and refugee lawyer (name withheld), Montreal, January 2021.

<sup>457</sup> Canada Border Services Agency, “Community Case Management and Supervision,” <https://www.cbsa-asfc.gc.ca/security-securite/detent/ccms-gccs-eng.html>.

<sup>458</sup> *Ibid.*

<sup>459</sup> Interview with Immigration and Refugee Board’s Immigration Division representatives, March 23, 2021.

<sup>460</sup> Interviews with immigration and refugee lawyer (name withheld), Toronto, September 2020, immigration and refugee lawyer (name withheld), Ottawa, December 2020, immigration and refugee lawyer (name withheld), Montreal, December 2020, immigration and refugee lawyer (name withheld), Vancouver, November 2020, immigration and refugee lawyer (name withheld), Vancouver, November 2020, immigration consultant and activist (name withheld), Toronto, June 2020, immigration and refugee lawyer (name withheld), Toronto, June 2020.

<sup>461</sup> Canada Border Services Agency, unpublished document on file with Human Rights Watch and Amnesty International, April 2021. The agency further detailed the number of “High Intervention Beds” in each region: three in Vancouver; two in Calgary; two in Edmonton; one in Winnipeg; four in the Greater Toronto Area; one in Windsor; one in Ottawa; one in Montreal; and one in Saint John.

supervision programs, and CBSA acknowledges that it tries to “work with medication to ensure stability” in detention prior to release.<sup>462</sup> In response to researchers’ inquiry regarding CBSA’s policies for referral to CCMS partners, the agency reiterated that immigration detainees’ mental health is one of the factors considered in this assessment.<sup>463</sup> According to an Ottawa-based lawyer, in the course of assessing eligibility for ATDs, CBSA officers “ask very intrusive questions regarding mental health,” which they can then use to argue for continued detention.<sup>464</sup> A Montreal-based lawyer reported that her client was refused supervision by one of CBSA’s contracted community partners because of his psychosocial disabilities and for this reason, he remained in detention.<sup>465</sup>

Canada has also not consistently done enough to ensure reasonable accommodations for former immigration detainees with disabilities to support their adherence to conditions of release, such as curfews and reporting requirements. According to a legal representative and advocate who has worked with hundreds of immigration detainees, in many communities there are inadequate programs, resources, and funding to meaningfully support former detainees, including those with mental health conditions.<sup>466</sup> When former detainees breach any conditions of release—even if only by accident—CBSA can re-arrest them and it becomes more difficult to obtain release a second time.<sup>467</sup>

The barriers to release that detainees with psychosocial disabilities face are in violation of Canada’s international legal obligations with respect to non-discrimination and the right to liberty. These barriers also infringe on the right to the highest attainable standard of physical and mental health, which is enshrined in numerous international human rights instruments, including the ICESCR, CRC, CEDAW, and CRPD.<sup>468</sup> According to the UN Committee on Economic, Social and Cultural Rights, the international expert body charged with monitoring compliance with the ICESCR, the right to health contains both freedoms and entitlements:

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<sup>462</sup> Interview with Canada Border Services Agency representatives, Toronto, Vancouver, Ottawa, February 1, 2021.

<sup>463</sup> Canada Border Services Agency, unpublished document on file with Human Rights Watch and Amnesty International, April 2021.

<sup>464</sup> Interview with immigration and refugee lawyer (name withheld), Ottawa, December 2020.

<sup>465</sup> Interview with immigration and refugee lawyer (name withheld), Montreal, January 2021.

<sup>466</sup> Interview with immigration consultant and activist (name withheld), Toronto, June 2020.

<sup>467</sup> Interview with immigration and refugee lawyer (name withheld), Ottawa, November 2020.

<sup>468</sup> Universal Declaration of Human Rights, adopted December 10, 1948, G.A. Res. 217A(III), UN Doc. A/810 at 71 (1948), art. 25; ICESCR, art. 12; CRC, art. 24; CEDAW, art.12; CRPD, art. 25; ACHPR, art. 16. See also UN Committee on Economic, Social, and Cultural Rights, “General Comment No. 14: The Right to the Highest Attainable Standard of Health (Art. 12),” UN Doc. E/C.12/2000/4, August 11, 2000, <https://undocs.org/E/C.12/2000/4> (accessed May 16, 2021), paras. 1 and 2.



The freedoms include the right to control one's health and body, ... and the right to be free from interference, such as the right to be free from torture, non-consensual medical treatment and experimentation. By contrast, the entitlements include the right to a system of health protection which provides equality of opportunity for people to enjoy the highest attainable level of health.<sup>469</sup>

Informed consent is the bedrock of the right to health, especially when it comes to people with psychosocial disabilities. The UN special rapporteur on the right to health noted that:

Informed consent is not mere acceptance of a medical intervention, but a voluntary and sufficiently informed decision, protecting the right of the patient to be involved in medical decision-making, and assigning associated duties and obligations to health-care providers. Its ethical and legal normative justifications stem from its promotion of patient autonomy, self-determination, bodily integrity, and well-being.<sup>470</sup>

In her 2018 report, the UN special rapporteur on the rights of persons with disabilities called on states to ensure that all health-related services “include a human rights-based approach to disability, are non-discriminatory, seek informed consent prior to any medical treatment, respect privacy and are free from torture or other cruel, inhuman or degrading treatment.”<sup>471</sup> The CRPD also explicitly requires the free and informed consent of persons with disabilities to medical treatment, and that the delivery of health services not discriminate on the basis of disability.<sup>472</sup>

States party also have a responsibility to respect the rights of non-citizens to an adequate standard of physical and mental health, and should not deny or limit non-citizens' access

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<sup>469</sup> UN Committee on Economic, Social and Cultural Rights, “Substantive Issues Arising in the Implementation of the International Covenant on Economic, Social and Cultural Rights,” General Comment No. 14, The Right to the Highest Attainable Standard of Health, E/C.12/2000/4, August 11, 2000, <https://undocs.org/E/C.12/2000/4> (accessed May 16, 2021), para 8.

<sup>470</sup> UN General Assembly, “Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health,” A/64/272, August 10, 2009, <https://undocs.org/en/A/64/272> (accessed May 16, 2021), para. 9.

<sup>471</sup> UN General Assembly, “Report of the Special Rapporteur on the rights of persons with disabilities, A/73/161, July 16, 2018, <https://undocs.org/en/A/73/161> (accessed May 16, 2021), para. 74(e).

<sup>472</sup> CRPD, art. 25(d) and (f).

to “preventative, curative and palliative health services.”<sup>473</sup> According to the UN Committee on Economic, Social and Cultural Rights, access to health facilities, goods, and services should be non-discriminatory, especially for “the most vulnerable or marginalized sections of the population,” including individuals with disabilities.<sup>474</sup>

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<sup>473</sup> UN Committee on the Elimination of Racial Discrimination, “General Recommendation 30: Discrimination Against Non-Citizens,” UN Doc. CERD/C/64/Misc.11/rev/3, 2004, at para 36; UN Committee on Economic, Social, and Cultural Rights, “General Comment No. 14: The Right to the Highest Attainable Standard of Health (Art. 12),” UN Doc. E/C.12/2000/4, August 11, 2000, <https://undocs.org/E/C.12/2000/4> (accessed May 16, 2021), para. 34.

<sup>474</sup> UN Committee on Economic, Social, and Cultural Rights, “General Comment No. 14: The Right to the Highest Attainable Standard of Health (Art. 12),” UN Doc. E/C.12/2000/4, August 11, 2000, <https://undocs.org/E/C.12/2000/4> (accessed May 16, 2021), paras. 12 and 18.

# Recommendations

## Overarching Recommendation

*To Canada's Prime Minister:*

- Gradually abolish immigration detention. Under no circumstances should a person for immigration-related reasons be treated in a punitive manner, including being subjected to solitary confinement, or detained in facilities used for criminal law enforcement, such as jails, prisons, or police stations, or in jail-like facilities.

## Key Steps to Achieve Overarching Recommendation

*To Public Safety Canada, the Canada Border Services Agency, and the Provincial Correctional Ministries:*

- End the use of provincial jails and other criminal incarceration facilities for immigration detention. Cancel all agreements and contracts between the federal and provincial governments in relation to detention of immigration detainees in provincial jails.
- Transform immigration holding centers into open and safe reception facilities. In particular, immigration detainees should be allowed access to their personal cellphones and electronic devices; immigration detainees should not be restricted to mandatory mealtimes and wake-up times; and visitations should be in-person and with privacy.
- Replace detention with community-based case management for those with pending immigration proceedings. Expand localized programs of community-based alternatives to detention that provide support rather than surveillance, and that are operated by local nonprofit organizations independently from CBSA.
- End the use of solitary confinement in immigration detention.
- End the use of handcuffs and shackles for immigration detainees.
- Maintain effective, supportive, voluntary, and culturally-appropriate mental health services in the community that are available and accessible to citizens and non-citizens alike. Consider reallocating funding from the CBSA budget to support community-based health services and alternatives to detention.
- Acknowledge the existence of systemic racism within the Canada Border Services Agency and the immigration detention system. Develop in close and transparent collaboration with communities of color a meaningful plan to address systemic

racism within CBSA and the immigration detention system, including the collection and publication of de-identified race- and ethnicity-based data about immigration detainees with their free and informed consent.

- Publish CBSA's annual budgets with a breakdown of all significant expenditures. Publish all other expenditures related to immigration detention, including all fees paid to the provinces in exchange for hosting immigration detainees in provincial facilities.
- In line with the guidance of the UN Working Group on Arbitrary Detention, stop holding persons with physical or psychosocial disabilities in immigration detention. Persons' disabilities should also be taken into account when determining the legality, necessity, and proportionality of any non-custodial migration enforcement measure.
- Ensure that all CBSA officers, immigration holding center personnel, and provincial jail authorities receive regular and effective training on how to interact with people with different disabilities, in particular on engaging with and responding to the requirements of people with psychosocial, intellectual, or developmental disabilities. These officers should receive training not only during their initial formation but also on an ongoing basis. Trainings should be developed in consultation with people with disabilities.
- Improve mental health services in immigration holding centers and provincial jails by ensuring that services are available to anyone, regardless of whether they have a medical diagnosis of a disability, there are sufficient numbers of qualified mental health professionals, treatment is based on free and informed consent, that there are adequate resources, and that levels of care meet standards of community health care.
- Ensure that full facility inspections and full and complete investigations of deaths in custody or with links to in-custody treatment are available to the public within three months of being finalized. Provide public reporting on suicide attempts, hunger strikes, work program stoppages, use of solitary confinement, use of force, and other significant events involving immigration detainees in provincial jails and immigration holding centers.
- Require that all facilities where immigration detainees are held—including provincial jails and immigration holding centers—grant nonprofit organizations access to immigration detainees to provide legal education, programming, and monitoring of conditions.

*To Immigration, Refugees and Citizenship Canada and the Immigration Division of the Immigration and Refugee Board:*

- In line with the Convention on the Rights of Persons with Disabilities, ensure the right to legal capacity and due process of all people with disabilities, including people with psychosocial, intellectual or developmental disabilities, in immigration detention. Specifically:
  - Clarify and limit the roles and responsibilities of designated representatives to facilitating supportive decision making for immigration detainees. Strictly prevent designated representatives from engaging in substitute decision-making that infringes on detainees' legal capacity;
  - Ensure that detainees can select or approve of their designated representative and ensure detainees can appeal the appointment of any designated representative;
  - Appoint an ombudsperson to provide oversight for designated representatives, and ensure that detainees' will and preferences are respected in supported decision-making processes, and that detainees' rights to health, due process, and legal capacity are protected; and
  - Where the state cannot accommodate immigration detainees' right to legal capacity and due process, detainees should be released from detention.
- Amend the Immigration and Refugee Protection Act to provide for a limit to the length of detention.
- In line with the guidance of the UN Working Group on Arbitrary Detention, amend the Immigration and Refugee Protection Regulations to prohibit authorities from holding persons with physical or psychosocial disabilities in immigration detention. Persons' disabilities should be taken into account when determining the legality, necessity and proportionality of any custodial or non-custodial migration enforcement measure, including the impact of these measures on mental health.
- Amend the Immigration and Refugee Protection Act to prohibit the detention of children and the separation of children from their detained parents, guided by the principle that neither detention nor family separation is ever in the best interests of children.
- Expand localized programs of community-based alternatives to detention which provide support rather than surveillance and are operated by local nonprofit organizations independently from CBSA. Support services should take a holistic view of a person's requirements, including housing, healthcare, mental health services, education, employment, children's needs, and legal representation.

*To Canada's Cabinet:*

- Withdraw Canada's declaration and reservation to Article 12 of the Convention on the Rights of Persons with Disabilities.
- Conduct a national independent review of the immigration detention system focusing on systemic racism and discrimination against persons with disabilities, particularly those with actual or perceived mental health conditions.
- Sign and ratify the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, to allow for international inspection of all sites of detention.
- Establish an independent body responsible for overseeing and investigating CBSA, with which immigration detainees can lodge complaints in the event of allegations of abuse, neglect, or other human rights concerns, to hold the government accountable. This oversight body should have the authority to order meaningful remedies and penalties, initiate its own reviews and investigations, including unannounced inspections, and not be driven solely by complaints. The oversight body should also allow for third parties, such as nongovernmental organizations, to make complaints regarding matters relating to individual cases as well as CBSA policies and practices.

## Acknowledgments

This report was researched and written by Hanna Gros, consultant in the Disability Rights Division of Human Rights Watch, with significant research and writing support from Justin Mohammed, human rights law and policy campaigner at Amnesty International, and Samer Muscati, associate director in the Disability Rights Division of Human Rights Watch.

The report was edited at Human Rights Watch by Heather Barr, interim co-director of the Women's Rights Division; Jane Buchanan, deputy director of the Disability Rights Division; Farida Deif, Canada director; Bill Frelick, director of the Refugee and Migrant Rights Division; Michael Garcia Bochenek, senior counsel to the Children's Rights Division; Clara Long, associate director of the US Program; Carlos Ríos Espinosa, senior researcher and advocate in the Disability Rights Division; Brian Root, senior quantitative analyst; Jordana Signer, fellow in the Refugee and Migrant Rights Division; and a health editor. At Amnesty International it was edited by Brian Griffey, regional researcher and advisor (North America), Carolina Jimenez Sandoval, deputy research director for the Americas, and Erika Guevara-Rosas, Americas director.

Maria McFarland Sánchez-Moreno and Aisling Reidy, senior legal advisors at Human Rights Watch, and Francesca Pizzutelli, deputy director and head of the refugees and migrants' rights team at Amnesty International, provided legal review; Babatunde Olugboji, deputy program director of Human Rights Watch, provided programmatic review.

We are grateful to the seven expert reviewers, including Audrey Macklin, Jenny Jeanes, Laura Best, Michael Bach, and Molly Joeck, who provided invaluable guidance and feedback.

Vino Wijeyasuriyar, researcher at the Samuel Centre for Social Connectedness, Elsie Tellier, intern at the Disability Rights Division of Human Rights Watch, Jaya Bordeleau-Cass, articling fellow at Amnesty International, and law students working with Amnesty International Laksmiina Balasubramaniam, Sacha Poirier-Feraud, and Fazan Baig, provided important research support.

Layout, design, and production were coordinated by Human Rights Watch staff, Camilo Moraga-Lewy, associate in the Americas and Disability Rights Divisions; Fitzroy Hepkins, production manager; Travis Carr, photo and publications coordinator; and Paula Beegan, consultant in the Disability Rights Division.

Estelle Bloom, lead consultant of Making It Clear, created the easy-to-read version of this report.

The report was translated from English to French by Cécile Joly, freelance translator, and Sabine Vandame, translator/reviewer and coordinator of the French translation team at Amnesty International Language Resource Center. The French version of the report was edited for Human Rights Watch by Peter Huvos, web editor.

Human Rights Watch and Amnesty International would also like to thank the many advocates, service providers, lawyers, and mental health professionals working in the fields of migrant and refugee rights and mental health, who shared their insights and analyses with us or otherwise provided assistance.

A special thank you to the Samuel Family Foundation and Kathryn Cottingham for the financial support that made this research and report possible.

Most importantly, Human Rights Watch and Amnesty International thank all those who shared their experiences, insights, and concerns with us. We are grateful for your trust and courage.



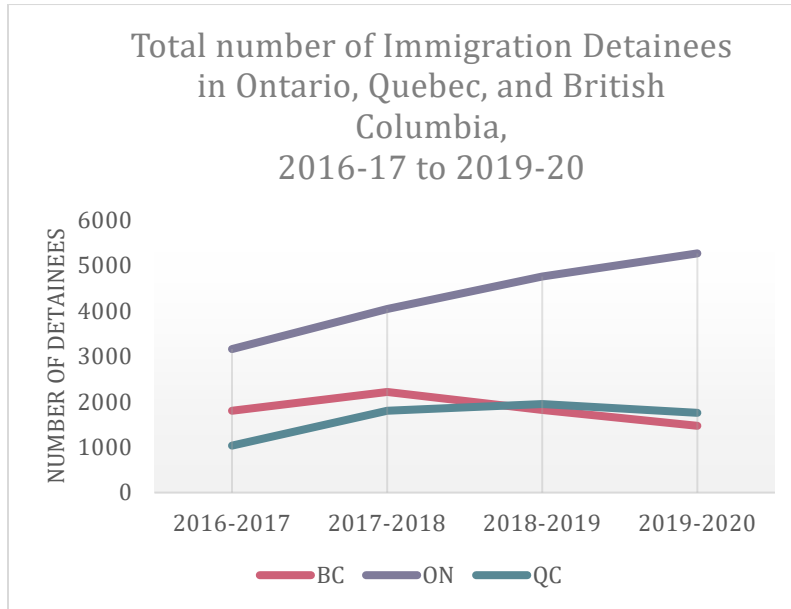
## Appendices

### Appendix I: Number of Immigration Detainees in Canada Per Year by Province or Territory

Number of detainees by Province or Territory *				
Province or Territory	2016-2017	2017-2018	2018-2019	2019-2020
Alberta	160	170	187	226
British Columbia	1801	2215	1818	1470
Manitoba	70	104	61	72
New Brunswick	18	10	15	28
Newfoundland	1	10	5	10
Northwest Territories	0	0	1	0
Nova Scotia	14	12	10	14
Ontario	3159	4040	4755	5265
Prince Edward Island	1	4	0	2
Quebec	1034	1803	1949	1755
Saskatchewan	30	14	15	26
Yukon	3	2	2	0

\* Source: CBSA data (publicly available). The sum of the provincial data is greater than the total number of detainees due to transfers between provinces.

## Appendix II: Total Number of Immigration Detainees Per Year in Ontario, Quebec, and British Columbia



\* Source: CBSA data (publicly available).

## Appendix III: Number of Immigration Detainees in Canada Per Year by Site of Detention

Year	Average length of detention	Number of detainees by site of detention*					
		immigration holding centers		Provincial jails		Other facilities	
		Number	%	Number	%	Number	%
2016-2017	20.8 days	4,248	59%	2,041	28%	971	13%
2017-2018	14.3 days	6,609	71%	1,831	20%	831	9%
2018-2019	13.8 days	7,212	69%	1,679	16%	1,622	15%
2019-2020	13.9 days	7,064	68%	1,932	19%	1,359	13%

\* Source: CBSA data (publicly available). The sum of the provincial data is greater than the total number of detainees due to transfers between provinces.

## Appendix IV: Provincial Jails where Immigration Detainees were Held in Fiscal Years 2017-18, 2018-19, and 2019-20

Provincial jails where immigration detainees were held in 2017-18, 2018-19, and 2019-20*				
Region	Name of facility	Number of detentions		
		2017-18	2018-19	2019-20
<b>Atlantic (Newfoundland, Prince Edward Island, Nova Scotia, New Brunswick)</b>	Bishop Falls Correctional Centre	-	1	-
	Central Nova Scotia Correctional Facility (Burnside)	12	7	13
	Dalhousie Correctional Centre	-	-	2
	Her Majesty's Penitentiary, St. John's	11	3	10
	Madawaska Regional Correctional Centre	4	-	2
	Moncton Detention Centre ***	3	-	-
	Northeast Nova Scotia Correctional Facility	-	4	1
	Prince Correctional Centre, Summerside	1	-	1
	Provincial Correctional Centre, Sleepy Hollow	3	-	1
	Southeast Regional Correctional Centre	-	8	3
	St. John's Regional Correctional Centre	2	3	3
	<b>REGION-WIDE TOTAL**</b>		<b>36</b>	<b>32</b>
<b>Quebec</b>	Centre de détention Chicoutimi ***	-	1	-
	Centre de détention Hull	-	-	3
	Centre de détention Québec	2	-	2
	Centre de détention Roberval	-	-	1
	Centre de détention Sherbrooke	-	7	6
	Centre de détention Saint-Jérôme	-	-	2
	Detention Centre Alma ***	1	-	-
	Detention Centre Rivières-Des-Prairies Montreal	111	117	140
	Detention Centre Sorel	1	2	-
	Etablissement Correctionnel Leclerc	-	2	5
	Montreal Bordeaux Prison	5	8	7
	<b>REGION-WIDE TOTAL**</b>		<b>1,804</b>	<b>1,952</b>
<b>Ontario - Greater Toronto Area</b>	Algoma Treatment and Remand Centre	4	1	1
	Central East Correctional Centre Lindsay	314	225	169

	Central North Correctional Centre - Penetanguishene	26	27	26
	Fort Frances Jail	4	3	
	Hamilton Wentworth Detention Centre	12	6	3
	Kenora Jail	-	1	3
	Maplehurst Correctional Complex	491	468	507
	Monteith Correctional Complex	3	-	1
	Ontario Correctional Institute, Brampton	1	-	
	Roy McMurty Youth Centre	-	-	1
	Sudbury Jail	3	1	2
	Thunder Bay Correctional Centre	8	3	
	Thunder Bay Jail	6	7	3
	Toronto East Detention Centre, Scarborough	112	72	53
	Toronto South Detention Centre	46	65	99
	Toronto West Detention Centre, Etobicoke	1	-	
	Vanier Centre for Women, Milton	58	36	40
	<b>REGION-WIDE TOTAL**</b>	<b>3,875</b>	<b>4,634</b>	<b>5,059</b>
<b>Ontario - North</b>	Brockville Jail	-	-	1
	North Bay Jail	3	-	1
	Ottawa-Carleton Regional Detention Centre	67	57	123
	Quinte Regional Detention Centre	12	-	8
	St. Lawrence Valley Correctional & Treatment Centre	5	2	-
	<b>REGION-WIDE TOTAL**</b>	<b>93</b>	<b>96</b>	<b>159</b>
<b>Ontario - South</b>	Elgin Middlesex Detention Centre, London	10	5	20
	Niagara Regional Detention Centre, Thorold	40	24	29
	Sarnia Jail	4	-	1
	South West Detention Centre	62	43	54
	Windsor Jail ***	5	-	-
	<b>REGION-WIDE TOTAL**</b>	<b>176</b>	<b>122</b>	<b>147</b>
<b>Prairies (Saskatchewan, Manitoba, Alberta)</b>	Brandon Correctional Centre	4	4	6
	Calgary Remand Centre	88	91	89
	Dauphin Correctional Centre	-	-	1
	Edmonton Remand Centre	75	93	120
	Fort Saskatchewan Correctional Centre	-	2	-
	Headingley Correctional Centre	4	6	11

	Lethbridge Correctional Centre	4	2	-
	Milner Ridge Correctional Centre	3	3	2
	North Slave Correctional Centre	-	1	-
	Peace River Correctional Centre	-	-	2
	Pine Grove Correctional Centre for Women	1	-	-
	Portage Correctional Centre	2	-	-
	Regina Correctional Centre	8	9	18
	Regina Police Service Detention Centre	1	-	-
	Saskatoon City Police	-	1	3
	Saskatoon Correctional Centre	8	3	6
	The Pas Correctional Centre	-	-	1
	White Birch Remand Centre	-	2	1
	Winnipeg Remand Centre	88	44	43
	Women's Correctional Centre of Manitoba	1	3	7
	<b>REGION-WIDE TOTAL**</b>	<b>288</b>	<b>266</b>	<b>322</b>
<b>Pacific (British Columbia)</b>	Allouette Correctional Centre for Women	57	53	47
	Fraser Regional Correctional Centre	227	289	278
	Kamloops Regional Correctional Centre	1	4	-
	North Fraser Pretrial Services Centre	355	380	398
	Okanagan Correctional Centre	2	6	5
	Prince George Correctional Centre	3	1	4
	Surrey Pretrial Services Centre	12	13	10
	Vancouver Island Regional Correctional Centre	2	7	4
	Whitehorse Correctional Centre	2	2	-
	<b>REGION-WIDE TOTAL**</b>	<b>2,214</b>	<b>1,824</b>	<b>1,470</b>

\* Source: Canada Border Services Agency, "Days Detained FY 2017-2018, 2018-2019 & 2019-2020 by Facility and Region," document number 2019-21550, undated, unpublished document on file at Human Rights Watch and Amnesty International (accessed under Access to Information Act).

\*\* Region-wide totals reflect the total number of immigration detainees held within the region, including those held at immigration holding centers, provincial jails, and other facilities. The sum of each column is not equal to the totals listed because detainees may be transferred between facilities and regions, and may be held in other facilities not listed in this chart (such as immigration holding centers). Darker shades signify the most frequently used provincial jail facilities within each region.

\*\*\* Although these facilities were listed in the data set provided by CBSA, publicly available information indicates they may not have been open during the reporting year(s).

## Appendix V: Letter to The Honourable Bill Blair, Minister of Public Safety and Emergency Preparedness

**AMNESTY  
INTERNATIONAL**



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The Honourable Bill Blair  
Minister of Public Safety and Emergency Preparedness  
House of Commons  
Ottawa, ON, Canada K1A 0A6

May 27, 2021

RE: Report findings and request for meeting on immigration detention in Canada

Dear Minister Blair,

Please accept our greetings on behalf of Human Rights Watch and Amnesty International, two international non-governmental organizations that work to improve human rights in countries around the world, including Canada.

Based on our research conducted between February 2020 and March 2021 – including interviews with former immigration detainees and their relatives, mental health experts, academics whose research focuses on immigration detention, lawyers, civil society representatives, and government officials – Human Rights Watch and Amnesty International have authored a joint report that documents serious international human rights violations that immigration detainees, particularly those with psychosocial disabilities, face in Canada. We plan to release this report on **June 17, 2021**, ahead of World Refugee Day.

We are pleased to share with you our research findings below, and would welcome your response to our findings.

***Research findings:***

- While immigration detainees are not serving criminal sentences, they are often treated like people incarcerated for criminal offences: handcuffed, shackled, searched, subjected to solitary confinement, and restricted to small spaces with rigid routines and under constant surveillance, with severely limited access to the outside world. In provincial jails, many immigration detainees are confined in tense and even dangerous environments where they may be subjected to violence.

- Canada is among the few countries in the global north without a legal limit to the length of immigration detention, meaning that under Canadian law, immigration detainees are at risk of being detained indefinitely.
- Studies of asylum seekers have shown that immigration detention can have devastating effects on mental health. For many detainees, not knowing how long they will be detained causes trauma, distress, and a sense of powerlessness. Detention can exacerbate existing psychosocial disabilities and frequently triggers new ones, including depression, anxiety, and post-traumatic stress. Scientific research shows that even brief periods of immigration detention can cause significant deterioration of mental health in asylum seekers. According to our research, many immigration detainees, particularly those fleeing traumatic experiences and persecution in search of safety and protection in Canada, develop suicidal ideation as they begin to lose hope. Immigration detention has especially harmful effects on communities of color, refugee claimants, and children and families.
- Immigration detainees with mental health conditions face discrimination throughout the detention process: they are more likely to be detained in jails, rather than immigration holding centers (which are dedicated exclusively to immigration detainees); in Ontario provincial jails, they are often placed in solitary confinement; they may not be allowed to make independent decisions about their legal matters, with tribunal-appointed representatives acting on their behalf as substitute decision-makers; they face significant barriers to release from detention; and, in the event that they are released, they are more likely to face onerous release conditions within the community, which may lead to re-arrest. Put simply, authorities often view psychosocial disabilities as a risk factor; instead of receiving vital support, immigration detainees with psychosocial disabilities receive disproportionately coercive treatment.
- Many former immigration detainees continue to live with symptoms of psychosocial disabilities they developed during incarceration, months and even years after release from detention. Immigration detention also has long-term consequences that ripple beyond immigration detainees and affect their children, loved ones, and communities.
- Immigration detainees who are from communities of color, particularly detainees who are Black, appear to be incarcerated for longer periods in immigration detention and they are often detained in provincial jails rather than immigration holding centers.

Over the past few years, the Canadian government has introduced new policies, guidelines and regulatory reforms in response to litigation and advocacy efforts around immigration detention.



However, this approach has largely failed to address the deeply imbedded structural gaps that disproportionately affect persons with psychosocial disabilities in immigration detention. Canada's treatment of individuals with mental health conditions in immigration detention is discriminatory and in breach of Canada's obligations under international human rights law.

Canada can and should work to uphold the rights of persons in immigration detention, and those at risk of being detained. In our report, we provide the following recommendations.

#### Overarching Recommendation

##### **To Canada's Prime Minister's Office and Cabinet:**

- Gradually abolish immigration detention. Under no circumstances should a person for immigration-related reasons be treated in a punitive manner, including being subjected to solitary confinement, or detained in facilities used for criminal law enforcement, such as jails, prisons, or police stations, or in jail-like facilities.

#### Key Steps to Achieve Overarching Recommendation

##### **To the Federal Ministry of Public Safety and Emergency Preparedness, the Canada Border Services Agency, and the Provincial Correctional Ministries:**

- End the use of provincial jails and other criminal incarceration facilities for immigration detention. Cancel all agreements and contracts between the federal and provincial governments in relation to detention of immigration detainees in provincial jails.
- Transform immigration holding centers into open and safe reception facilities. In particular, immigration detainees should be allowed access to their personal cellphones and electronic devices; immigration detainees should not be restricted to mandatory mealtimes and wake-up times; and visitations should be in-person and with privacy.
- Replace detention with community-based case management for those with pending immigration proceedings. Expand localized programs of community-based alternatives to detention that provide support rather than surveillance, and that are operated by local nonprofit organizations independently from CBSA.
- End the use of solitary confinement in immigration detention.
- End the use of handcuffs and shackles for immigration detainees.
- Maintain effective, supportive, voluntary, and culturally-appropriate mental health

services in the community that are available and accessible to citizens and non-citizens alike. Consider reallocating funding from the CBSA budget to support community-based health services and alternatives to detention.

- Acknowledge the existence of systemic racism within the Canada Border Services Agency and the immigration detention system. Develop in close and transparent collaboration with communities of color a meaningful plan to address systemic racism within CBSA and the immigration detention system, including the collection and publication of de-identified race- and ethnicity-based data about immigration detainees with their free and informed consent.
- Publish CBSA's annual budgets with a breakdown of all significant expenditures. Publish all other expenditures related to immigration detention, including all fees paid to the provinces in exchange for hosting immigration detainees in provincial facilities.
- In line with the guidance of the UN Working Group on Arbitrary Detention, stop holding persons with physical or psychosocial disabilities in immigration detention. Persons' disabilities should also be taken into account when determining the legality, necessity, and proportionality of any non-custodial migration enforcement measure.
- Ensure that all CBSA officers, immigration holding center personnel, and provincial jail authorities receive regular and effective training on how to interact with people with different disabilities, in particular on engaging with and responding to the requirements of people with psychosocial, intellectual, or developmental disabilities. These officers should receive training not only during their initial formation but also on an ongoing basis. Trainings should be developed in consultation with people with disabilities.
- Improve mental health services in immigration holding centers and provincial jails by ensuring that services are available to anyone, regardless of whether they have a medical diagnosis of a disability, there are sufficient numbers of qualified mental health professionals, treatment is based on free and informed consent, that there are adequate resources, and that levels of care meet standards of community health care.
- Ensure that full facility inspections and full and complete investigations of deaths in custody or with links to in-custody treatment are available to the public within three months of being finalized. Provide public reporting on suicide attempts, hunger strikes, work program stoppages, use of solitary confinement, use of force, and other significant events involving immigration detainees in provincial jails and immigration holding centers.

- Require that all facilities where immigration detainees are held—including provincial jails and immigration holding centers—grant nonprofit organizations access to immigration detainees to provide legal education, programming, and monitoring of conditions.

**To the Federal Ministry of Immigration, Refugees and Citizenship Canada and the Immigration Division of the Immigration and Refugee Board:**

- In line with the Convention on the Rights of Persons with Disabilities (CRPD), ensure the right to legal capacity and due process of all people with disabilities, including people with psychosocial, intellectual or developmental disabilities, in immigration detention. Specifically:
  - Clarify and limit the roles and responsibilities of designated representatives to facilitating supportive decision making for immigration detainees. Strictly prevent designated representatives from engaging in substitute decision-making that infringes on detainees' legal capacity;
  - Ensure that detainees can select or approve of their designated representative and ensure detainees can appeal the appointment of any designated representative;
  - Appoint an ombudsperson to provide oversight for designated representatives, and ensure that detainees' will and preferences are respected in supported decision-making processes, and that detainees' rights to health, due process, and legal capacity are protected; and
  - Where the state cannot accommodate immigration detainees' right to legal capacity and due process, detainees should be released from detention.
- Amend the Immigration and Refugee Protection Act to provide for a limit to the length of detention.
- In line with the guidance of the UN Working Group on Arbitrary Detention, amend the Immigration and Refugee Protection Regulations to prohibit authorities from holding persons with physical or psychosocial disabilities in immigration detention. Persons' disabilities should be taken into account when determining the legality, necessity and proportionality of any custodial or non-custodial migration enforcement measure, including the impact of these measures on mental health.

- Amend the Immigration and Refugee Protection Act to prohibit the detention of children and the separation of children from their detained parents, guided by the principle that neither detention nor family separation is ever in the best interests of children.
- Expand localized programs of community-based alternatives to detention which provide support rather than surveillance and are operated by local nonprofit organizations independently from CBSA. Support services should take a holistic view of a person's requirements, including housing, healthcare, mental health services, education, employment, children's needs, and legal representation.

**To Canada's Parliament and the Senate:**

- Withdraw Canada's declaration and reservation to Article 12 of the Convention on the Rights of Persons with Disabilities.
- Conduct a national independent review of the immigration detention system focusing on systemic racism and discrimination against persons with disabilities, particularly those with actual or perceived mental health conditions.
- Sign and ratify the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, to allow for international inspection of all sites of detention.
- Establish an independent body responsible for overseeing and investigating CBSA, with which immigration detainees can lodge complaints in the event of allegations of abuse, neglect, or other human rights concerns, and hold the government accountable. This oversight body should have the authority to order meaningful remedies and penalties, initiate its own reviews and investigations, including unannounced inspections, and not be driven solely by complaints. The oversight body should also allow for third parties, such as nongovernmental organizations, to make complaints regarding matters relating to individual cases as well as CBSA policies and practices.

As part of our research and to ensure thorough and objective reporting, we would welcome your response as well as any other information you would like to share on the issues highlighted above. We respectfully request that you respond to these queries by June 11, 2021, and we will acknowledge your response publicly. We welcome the opportunity to meet with you at your earliest convenience to further discuss these issues.

Please feel free to reach out to Samer Muscati, Acting Deputy Director of the Disability Rights Division at Human Rights Watch, at [muscats@hrw.org](mailto:muscats@hrw.org) or by phone at 437-886-2505, and Justin Mohammed, Human Rights Law & Policy Campaigner at Amnesty International Canada, at [jmohammed@amnesty.ca](mailto:jmohammed@amnesty.ca) or by phone at 613-744-7667 x 249.

Sincerely,



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The Honourable Patty Hajdu  
Minister of Health

The Honourable Marco Mendicino  
Minister of Immigration, Refugees and Citizenship

# “I Didn’t Feel Like a Human in There”

## Immigration Detention in Canada and its Impact on Mental Health

Despite its reputation as a refugee-welcoming and multicultural country, Canada detains thousands of people on immigration-related grounds every year in often abusive conditions. This includes many fleeing persecution and seeking protection in Canada.

Based on interviews with former immigration detainees and their relatives, mental health experts, academics, lawyers, civil society representatives, and government officials, *“I Didn’t Feel Like a Human in There”*, a report by Human Rights Watch and Amnesty International, documents how people in immigration detention are regularly handcuffed, shackled, and held with little to no contact with the outside world.

The report finds that many are held in provincial jails with the regular jail population and even subjected solitary confinement. Canadian law does not establish time limits on detention and immigration detainees can be held for months or years. Many immigration detainees develop suicidal thoughts as they begin to lose hope that they will be released.

Individuals with psychosocial disabilities experience discrimination throughout the immigration detention process. They are more likely to be detained in provincial jails rather than immigration holding centers, and many also face significant barriers to release with stricter release conditions.

The report calls on the Canadian authorities to gradually abolish immigration detention. Under no circumstances should a person for immigration-related reasons be treated in a punitive manner, including being subjected to solitary confinement, or detained in facilities used for criminal law enforcement, such as jails, or in jail-like facilities.



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