



Joint Submission by HRW & AI to BC Corrections on Immigration Detention in Provincial Jails

Overview

Over the past five years, Canada has detained tens of thousands of people on immigration-related grounds, including refugee claimants.¹ Immigration detainees are held exclusively under immigration law, most commonly because authorities believe they may not appear for an immigration or refugee proceeding, but many detainees experience some of Canada's most restrictive confinement conditions. Since 2017, hundreds of immigration detainees have been incarcerated in British Columbia's provincial jails, most of them in the Allouette Correctional Centre for Women, Fraser Regional Correctional Centre, and North Fraser Pretrial Services Centre.² Immigration detainees can be held for months and even years without end in sight because Canada does not have a legislative limit on the duration of immigration detention.³

Nearly two decades after its establishment, the Canada Border Services Agency (CBSA) remains the only major law enforcement agency in Canada without independent civilian oversight despite its sweeping police powers. CBSA's unchecked exercise of its broad mandate and enforcement powers has repeatedly resulted in human rights violations in the context of immigration detention (for further details and analysis, please see Attachment A: *"I Didn't Feel Like a Human in There": Immigration Detention in Canada and its Impact on Mental Health*).

CBSA has full discretion over where immigration detainees are held, with no legal standard guiding the Agency's decision to hold a detainee in a provincial jail rather than an immigration holding center dedicated to immigration detainees.⁴ Immigration detainees have no means to challenge CBSA's placement decisions at detention review hearings.⁵ Canada's practice of incarcerating immigration detainees in provincial jails is a violation of international human rights standards as incarceration in these

¹ Canada Border Services Agency, "Annual Detention, Fiscal Year 2020 to 2021," December 9, 2021, <https://www.cbsa-asfc.gc.ca/security-securite/detent/stat-2020-2021-eng.html> (accessed January 27, 2022).

² Canada Border Services Agency, "Days Detained FY 2017-2018, 2018-2019 & 2019-2020 by Facility and Region," unpublished document on file with Human Rights Watch and Amnesty International (accessed under Access to Information Act), undated.

³ Since 2016, Canada held more than 300 immigration detainees for longer than a year. See, Immigration and Refugee Board of Canada, "Detention Reviews by Length of Detention," February 5, 2021, https://irbcisr.gc.ca/en/statistics/detentions-reviews/Pages/detenLen.aspx#inline_content (accessed May 16, 2021).

⁴ *Ebrahim Toure v. Minister of Public Safety*, 2017 ONSC 5878, paras. 71-72. See also Stephanie J. Silverman et al., "Examining the 'National Risk Assessment for Detention' Process: An Intersectional Analysis of Detaining 'Dangerousness' in Canada", *Journal of Ethnic and Migration Studies* (2020).

⁵ *Ibid.*

facilities is inherently punitive in nature.⁶ By virtue of this agreement, BC is implicated in human rights violations against immigration detainees.⁷

CBSA relies on bilateral agreements and arrangements with provincial authorities to incarcerate immigration detainees in provincial jails.⁸ There is evidence that BC provincial authorities are in potential breach of the human rights provisions included in the province's agreement with CBSA. In particular, BC is in potential breach of its legal obligations under the agreement to provide just and humane treatment in provincial jails, as well as to avoid co-mingling immigration detainees with criminally accused and convicted individuals in those facilities (for further details and analysis, please see Attachment B: *Legal Analysis of Agreements Allowing Immigration Detention in Canadian Provincial Jails*).

Human Rights Watch and Amnesty International urge the Government of British Columbia to respect its human rights obligations by cancelling the province's immigration detention agreement with CBSA.

Impact of Immigration Detention on Mental Health

Studies of refugee claimants have shown that immigration detention can have devastating effects on mental health, as it can exacerbate existing psychosocial disabilities and trigger new ones, including depression, anxiety, and post-traumatic stress.⁹ For many detainees, not knowing how long they will be detained causes trauma, distress, and a sense of powerlessness. Immigration detainees may develop suicidal ideation as they lose hope.¹⁰ 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.

Our research documented the case of a single mother in BC, who was diagnosed with depression and post-traumatic stress and had endured severe domestic violence and abuse.¹¹ The woman had been living in Canada for several years and had an ongoing application for permanent residence. According to her lawyer,

⁶ 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, paras. 38 and 44. For more analysis, see Attachment A and Attachment B.

⁷ Ibid.

⁸ Human Rights Watch and Amnesty International video interview with Canada Border Services Agency representatives, Toronto, Vancouver, Ottawa, Canada, 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.

⁹ 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 et al., "Refugees in Host Countries: Psychosocial Aspects and Mental Health," in *An Uncertain Safety* (2018), pp. 187–211; Janet Cleveland et al., "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); M. von Werthern, et al., "The Impact of Immigration Detention on Mental Health: A Systematic Review," *BMC Psychiatry*, vol. 18 (2018), <https://bmcp psychiatry.biomedcentral.com/articles/10.1186/s12888-018-1945-y>.

¹⁰ See Attachment A.

¹¹ Ibid.

“CBSA set up surveillance at her home, then detained her as a flight risk because she didn’t answer her door once.”¹² She was detained in a provincial jail. As a result, she was separated from her two young children – one of whom is Canadian – and they were at risk of being transferred to the custody of child welfare services. At her detention review hearing, the woman described the impact of 10 days in a provincial jail under immigration hold:

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 think 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.¹³

In the aftermath of the woman’s detention, her permanent residence application was approved. We documented the case of another woman who was detained in a BC jail under immigration hold.¹⁴ She explained that almost a decade after her detention, she still cannot wear anything on her wrists because it reminds her of being handcuffed. She also does not wear green because it was the color of her jail garb. When she sees a CBSA officer, she says she starts shaking and has panic attacks. The woman continues to live and work in BC, and she is now a permanent resident.

Immigration detention can have fatal consequences. Since 2000, at least 16 people have died by suicide or for other reasons in Canadian immigration detention, and most of them were held in provincial jails.¹⁵ CBSA has a history of cloaking fatalities of immigration detainees in secrecy and refusing to release basic information about those who die in custody and the cause of death, often citing privacy concerns.¹⁶ Some people who died in CBSA custody remain unnamed years after their death.¹⁷ In 2013, Lucia Vega Jimenez died by suicide in CBSA custody, after spending over two weeks in the “high-risk portion” of the BC Allouette Correctional Centre for Women, where her “urgent” request to see a doctor and subsequent

¹² Human Rights Watch and Amnesty International video interview with an immigration and refugee lawyer (name withheld), Vancouver, Canada, January 2021.

¹³ 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.

¹⁴ See Attachment A.

¹⁵ Hanna Gros et al., “Death of Immigration Detainee an Urgent Wake-Up Call for Canada,” commentary, Human Rights Watch Dispatch, February 4, 2022, <https://www.hrw.org/news/2022/02/04/death-immigration-detainee-urgent-wake-call-canada>.

¹⁶ Leslie Young, “Deaths in Detention: CBSA’s Fatal Failure to Learn from its Mistakes,” *Global News*, November 5, 2014, <https://globalnews.ca/news/1649523/deaths-in-detention-cbsas-fatal-failure-to-learn-from-its-mistakes/>; Debra Black, “Second Immigration Detainees Dies in Prison in Less than A Week,” *Toronto Star*, March 14, 2016, <https://www.thestar.com/news/immigration/2016/03/14/second-immigration-detainee-dies-in-prison-in-less-than-a-week.html>; “Vigil Held for Detainee who Died After Being Held at Laval Immigration Detention Centre,” *CBC News*, February 14, 2022, <https://www.cbc.ca/news/canada/montreal/cbsa-detainee-death-laval-1.6350503>.

¹⁷ Leslie Young, “Deaths in Detention: CBSA’s Fatal Failure to Learn from its Mistakes,” *Global News*, November 5, 2014, <https://globalnews.ca/news/1649523/deaths-in-detention-cbsas-fatal-failure-to-learn-from-its-mistakes/>.

referral by a nurse to a mental health coordinator went unanswered.¹⁸ According to the coroner’s inquest, Vega Jimenez had expressed fear of being tortured and murdered if she were deported to Mexico.¹⁹

Discrimination Against Individuals with Mental Health Conditions

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.²⁰ According to CBSA officials, 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 behaviour” or to “facilitate access to specialized care.”²¹ Our research found that some immigration detainees have been held in provincial jails at least in part because of symptoms associated with psychosocial disabilities, including suicidal ideation.²²

CBSA’s enforcement manual explicitly links “instability ... associated with mental imbalance” with “danger.”²³ According to our research, CBSA officials frequently frame behaviors of people with psychosocial disabilities or mental health deterioration as “noncooperation” and reasons to continue detention, arguing that detainees’ conditions make them “unreliable,” “deceptive,” “untrustworthy,” “uncontrollable,” or “unable to comply.”²⁴

¹⁸ BC Ministry of Justice Coroners Service, “Verdict at Coroners Inquest: Findings and Recommendations as a Result of the Coroner’s Inquest Pursuant to Section 38 of the Coroners Act, [SBC 2007] C15, Into the Death of Vega Jimenez, Lucia Dominga,” October 7, 2014, <https://www2.gov.bc.ca/assets/gov/birth-adoption-death-marriage-and-divorce/deaths/coroners-service/inquest/2014/vega-jimenez-lucia-dominga-2013-0380-0004-verdict.pdf>. See also, Hanna Gros et al., “‘We Have No Rights’: Arbitrary Imprisonment and Cruel Treatment of Migrants with Mental Health Issues in Canada,” 2015, International Human Rights Program, University of Toronto’s Faculty of Law, <https://ihrp.law.utoronto.ca/sites/default/files/PUBLICATIONS/IHRP%20We%20Have%20No%20Rights%20Report%20web%20170615.pdf>, pp. 15-17.

¹⁹ Ibid.

²⁰ 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 (accessed May 15, 2021), para. 41. According to the UN Working Group on Arbitrary Detention, immigration detention of “persons with disabilities ... must not take place”. See also the Convention on the Rights of Persons with Disabilities (CRPD), art. 5; the International Covenant on Civil and Political Rights (ICCPR); the International Covenant on Economic, Social and Cultural Rights (ICESCR); and the Convention against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment (CAT).

²¹ See Attachment A. See also Canada Border Services Agency, “Detentions,” <https://www.cbsa-asfc.gc.ca/security-secureite/detent/menu-eng.html>.

²² Ibid.

²³ 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.

²⁴ See Attachment A.

Lack of Access to Reasonable Accommodations

Immigration detainees with physical and sensory disabilities also face severe barriers in provincial jails. We documented the case of a man with a hearing disability who made a refugee claim upon arriving in Vancouver and was detained by CBSA.²⁵ In the course of his arrest, CBSA officers confiscated his belongings, including his re-chargeable hearing aid battery. He was incarcerated for approximately two months on immigration hold in three different provincial jails – Vancouver Jail, Fraser Regional Correctional Centre, and North Fraser Correctional Centre – and spent several weeks in solitary confinement. The man had to rely on CBSA officers to provide him with hearing aid batteries, and as a result, he 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.... When I finally got a battery, I felt so happy, I couldn't believe it. I felt like my life was back again.²⁶

Five years following his detention, the man continues to live and work in BC. The failure to provide reasonable accommodations, such as hearing aid batteries, to immigration detainees with disabilities is a violation of the Convention on the Rights of Persons with Disabilities, which Canada ratified in 2010.²⁷

Communities of Color

Detainees who are from communities of color, particularly detainees who are Black, appear to be incarcerated for longer periods in immigration detention and are often detained in provincial jails rather than dedicated immigration holding centers.²⁸

According to our 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.²⁹

²⁵ See Attachment A.

²⁶ Human Rights Watch interview with Abdelrahman Elmady, former immigration detainee, Vancouver, Canada, February 2021.

²⁷ 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. 5 (2) and (3).

²⁸ See Attachment A.

²⁹ Canada Border Services Agency, untitled, document number 2019-21550, unpublished document on file with Human Rights Watch and Amnesty International (accessed under Access to Information Act), December 10, 2019.

Our research findings include observations by lawyers indicating that their clients were treated more harshly in the immigration detention system if they were persons of color.³⁰ 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 containment.”³¹ Another lawyer in Vancouver remarked that the only explanation she could think of for the different treatment of two of her clients in immigration detention had to do with race.³² According to a psychologist with decades of experience researching the impact of immigration detention in Canada, systemic racism becomes more obvious at the macrostructural level: “CBSA imprisons people for non-criminal matters and they happen to be massively from the global south.”³³

International Human Rights Standards

By allowing immigration detainees to be incarcerated in its provincial jails, BC is in violation of international human rights standards. Incarceration in these facilities is inherently punitive in nature and not suited nor permitted under international standards for use in immigration detention.³⁴

In December 2021, United Nations human rights experts urged that “people should not be treated as criminals merely for irregular crossing a State border or lacking proper documentation,” and that states should “ultimately put an end” to the practice of immigration detention.³⁵ According to the UN Working Group on Arbitrary Detention, where immigration detention does take place, conditions of detention “must be humane, appropriate and respectful, noting the non-punitive character of the detention in the course of migration proceedings.”³⁶ 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.³⁷

BC may also be in breach of its legal obligations under its agreement with CBSA, which require provincial authorities to provide “just and humane treatment” to immigration detainees and to avoid co-mingling

³⁰ See Attachment A.

³¹ Ibid.

³² Ibid.

³³ Ibid.

³⁴ See Attachment B.

³⁵ United Nations Office of the High Commissioner for Human Rights, “UN Human Rights Experts Urge States to Adopt Alternative Measures and Put An End to Detention of Migrants,” December 17, 2021, <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=27990&LangID=E>.

³⁶ 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, para. 38.

³⁷ Ibid, para. 44.

them with criminally accused and convicted individuals.³⁸ Our research indicates immigration detainees face serious human rights violations in provincial jails.³⁹

We urge the Government of British Columbia to respect its human rights obligations by cancelling the province’s immigration detention agreement with CBSA.

³⁸ Attachment B.

³⁹ Attachment A.