



British Columbia's
Office of the Human Rights
Commissioner


Submission regarding immigration detention in provincial correctional centres

Submission | March 2022

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SUBMISSION | MARCH 2022

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To the Indigenous peoples of this place we now call British Columbia: Today we turn our minds to you and to your ancestors. You have kept your unceded homelands strong. We are grateful to live and work here.

March 25, 2022

The Honourable Mike Farnworth
Minister of Public Safety and Solicitor General
PO Box 9010 Stn Prov Govt
Victoria, BC V8W 9E2

Dear Minister Farnworth,

Last June, Human Rights Watch and Amnesty International released a report entitled “‘I didn’t feel like a human in there’: Immigration detention in Canada and its impact on mental health.” In addition to other findings, the report documents widespread use of provincial correctional centres to house immigration detainees in British Columbia and across Canada, as well as numerous associated human rights violations.

It was out of concern for this situation that I wrote to you in November to urge you to terminate the Arrangement between the provincial and federal governments that enables this practice. I am pleased that you have launched a review of the Arrangement, and I appreciate your invitation to my Office to make a further submission regarding the human rights considerations. I encourage you to act transparently in this review process by publicly releasing the findings of your engagement.

As B.C.’s Human Rights Commissioner, I am mandated to promote compliance with statutory and international human rights law. As I describe in my submission, international human rights standards clearly indicate that immigration detention should never be punitive in nature and must not take place in facilities intended to house individuals accused or convicted of a criminal act. People held under immigration law have committed no crime; it is wrong that we treat them as if they have.

I trust that upon the conclusion of this review you will agree that the practice of holding immigration detainees in provincial correctional centres must end. If I can offer any additional assistance in your review, please do not hesitate to ask.

Sincerely,



Kasari Govender
Human Rights Commissioner

cc: The Honourable David Eby, Attorney General
M.L.A. Mike Morris, Critic for Minister of Public Safety and Solicitor General
M.L.A. Michael de Jong, Critic for Attorney General

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Submission regarding immigration detention in provincial correctional centres

Introduction

Across Canada, migrants¹ are detained for non-criminal purposes and for indefinite periods of time, undermining our domestic and international human rights commitments. In B.C., provincial correctional centres are widely used to detain migrants, making the provincial government responsible for protecting the human rights of those being held. People detained under immigration law have committed no crime; it is wrong that we treat them as if they have.

Following the release of Human Rights Watch and Amnesty International's report entitled "'I didn't feel like a human in there': Immigration detention in Canada and its impact on mental health"² and subsequent pressure from community organizations and our Office, in January 2022, the Minister of Public Safety and Solicitor General announced a review of the agreement that facilitates the use of provincial correctional centres for detaining migrants. In this submission, B.C.'s Human Rights Commissioner calls for the termination of this agreement.

Context

The Human Rights Commissioner is mandated to promote compliance with statutory and international human rights law. According to the United Nations (UN) Working Group on Arbitrary Detention, immigration detention should never be punitive in nature and must not take place in facilities intended to house individuals accused or convicted of a criminal act.³

Yet, the Government of British Columbia has signed an agreement (the Arrangement) with the Canada Border Services Agency (CBSA) to hold some immigration detainees in B.C. correctional centres, including Alouette Correctional Centre for Women, Fraser Regional Correctional Centre and North Fraser Pretrial Centre. The latter is a secure facility meant for individuals with prior

¹ 'Migrant' is an umbrella term, describing a person who moves away from their place of usual residence, whether within a country or across an international border, temporarily or permanently, and for a variety of reasons. As defined by the International Organization of Migration, 2019, 132, https://publications.iom.int/system/files/pdf/iml_34_glossary.pdf

² Amnesty International and Human Rights Watch, "'I Didn't Feel Like a Human in There': Immigration Detention in Canada and Its Impact on Mental Health," 2021, <https://www.amnesty.org/en/documents/amr20/4195/2021/en/>

³ UN Working Group on Arbitrary Detention, 2018, 6, https://www.ohchr.org/sites/default/files/Documents/Issues/Detention/RevisedDeliberation_AdvanceEditedVersion.pdf

criminal history or behaviour that justifies a high level of supervision and physical restrictions.⁴ In addition, detainees in B.C. are held in the CBSA's Immigration Holding Centre, which is outside the scope of the Arrangement. According to CBSA data, approximately 94 per cent of immigration detainees are held for administrative reasons and pose no risk to public safety, yet between 16 and 30 per cent of detainees across Canada were held in provincial jails each year from 2012 to 2020.⁵

Despite there being no principled or legal basis on which to hold migrants in correctional facilities, they are being held in jails across the country, including here in B.C.

The onset of the COVID-19 pandemic reduced the number of immigration detainees in B.C. correctional centres. However, the proportion of immigration detainees held in provincial jails across Canada (rather than immigration holding centres) and the average length of detention both doubled since the pandemic began.⁶ The number of detainees may return to pre-pandemic levels unless immediate action is taken.

Provincial jurisdiction is engaged

Although immigration detainees are held under the authority of CBSA, the Government of British Columbia is facilitating the detention process through its Arrangement with the federal government. The provincial government de facto assumes responsibility for the conditions under which migrants in B.C. correctional centres are being detained, including ensuring compliance with statutory and international human rights standards.

The human rights violations discussed below are enabled by the Arrangement, thus creating an obligation for the provincial government to meet its human rights commitments and end the Arrangement.

The Arrangement violates the right to substantive equality

Under B.C.'s *Human Rights Code*, migrants in custody have the right to be free from discrimination based on Indigenous identity, race, colour, ancestry, place of origin, religion, marital status, physical and mental disability, sex, sexual orientation, gender identity or expression or age. The provincial government also has a legal obligation to protect the rights of migrants by complying with all UN human rights conventions and covenants Canada has ratified.⁷

⁴ BC Corrections Profile, 2021, <https://www2.gov.bc.ca/assets/gov/law-crime-and-justice/criminal-justice/corrections/reports-publications/bc-corrections-profile.pdf>

⁵ CBSA Annual Detention, 2020, <https://www.cbsa-asfc.gc.ca/security-securite/detent/stat-2019-2020-eng.html>

⁶ Amnesty International and Human Rights Watch, 2021, 63

⁷ Including: [International Convention on the Elimination of All Forms of Racial Discrimination](#); [International Covenant on Civil and Political Rights](#); [International Covenant on Economic, Social and Cultural Rights](#); [Convention on the Elimination of All Forms of Discrimination against Women](#); [Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment](#); [Convention on the Rights of the Child](#); [Convention on the Rights of Persons with Disabilities](#)

From B.C.'s *Human Rights Code* to Canada's *Charter of Rights and Freedoms* to the international human rights framework, protections against discrimination universally protect substantive equality in which inequities are measured through disproportionate impact of government policies, laws and practices, in addition to direct discrimination. For example, the negative impacts of immigration detention disproportionately impact people with disabilities and racialized people.⁸ This is discriminatory and contrary to law.

Regardless of whether the inequities are caused by the *Immigration and Refugee Protection Act* or the exercise of CBSA discretion over who is detained for how long, inequities are experienced in provincial facilities and under the oversight of provincial employees. Therefore, the provincial government bears a significant burden to address them.

The inequities enabled by the Arrangement are detailed below.

The Arrangement violates the rights of people with disabilities

The B.C. *Human Rights Code* prohibits discrimination based on mental and physical disability in certain contexts, including in provincial jails. The UN Convention on the Rights of Persons with Disabilities and the International Covenant on Civil and Political Rights provide further human rights protections for people with disabilities. For example, under Article 14 of the Convention on the Rights of Persons with Disabilities, governments are required to ensure that persons with disabilities enjoy the right to liberty and security of the person on an equal basis with others. Additionally, the UN Human Rights Committee has indicated that Article 9 of the International Covenant on Civil and Political Rights prohibits the justification of a deprivation of liberty based on disability.⁹

The obligation to provide adequate health care to detainees is explained by the UN Committee on Economic, Social, and Cultural Rights, which has clarified that governments are obligated to provide adequate health care, including preventative services, to detainees.¹⁰ The UN Standard Minimum Rules for the Treatment of Prisoners (Mandela Rules) also outline the responsibility of governments to ensure health care services are provided without discrimination on the grounds of legal status.¹¹

Considering the stressors surrounding the migration experience and the traumatic events that often precipitate migration, it is not surprising that some migrants present with signs of trauma such as emotional distress, depression, anxiety or agitation. Instead of providing adequate treatment and supports for migrants with psychosocial disabilities, migrants with mental health conditions are more likely to be detained in provincial jails and in segregation, where their

⁸ Amnesty International and Human Rights Watch, 2021, 5, 64

⁹ International Human Rights Program, University of Toronto, "We Have No Rights: Arbitrary Imprisonment and Cruel Treatment of Migrants with Mental Health Issues in Canada," 2015, 94, https://ihrp.law.utoronto.ca/We_Have_No_Rights

¹⁰ UN Committee on Economic, Social, and Cultural Rights, 2000, 10, <https://digitallibrary.un.org/record/425041?ln=en>

¹¹ UN Standard Minimum Rules for Treatment (Mandela Rules), 1957, 8, https://www.unodc.org/documents/justice-and-prison-reform/Nelson_Mandela_Rules-E-ebook.pdf

condition tends to worsen.¹² Perversely, mental health conditions become a barrier for release and are used by the CBSA to justify continued detention.¹³

Some migrants with physical disabilities also face barriers. In one troubling account, officials failed to provide a man with a hearing disability with enough hearing aid batteries. As a result, he spent most of his time in a B.C. jail unable to hear.¹⁴

The mistreatment of migrants with disabilities is discriminatory and directly violates their rights to equality, liberty and security of person, as well as their right to access to health care in detention.¹⁵

The Arrangement violates the rights of racialized people

The *Human Rights Code* also protects the rights of migrants on the basis of race, colour, ancestry and place of origin. In addition, the federal and provincial governments have a legal obligation to eradicate racial discrimination under several international human rights conventions and covenants. For example, Article 5 of the International Convention on the Elimination of All Forms of Racial Discrimination requires governments to both prohibit and eliminate all forms of racial discrimination and ensure equality before the law.¹⁶

The Amnesty International and Human Rights Watch report outlines how racialized people, and Black people in particular, experience harsher treatment in detention. Although the data is limited, there is evidence that migrants from countries in Africa are overrepresented among the immigration detainees in provincial jails. In 2019, the largest proportion of detainees held for three months or longer, six months or longer and nine months or longer were from African countries.¹⁷ Officials are more likely to perceive Black people, and Black men in particular, as a threat to public safety. As a result, Black men face lengthier detentions and more frequent placement in secure facilities with the highest level of supervision and physical restrictions. Black detainees are also often required to provide higher bonds to obtain release from detention.¹⁸

The anti-Black racism embedded in the immigration detention system is evident in the story of a Black single mother who was detained and placed in segregation after not responding to a visit from officials on one occasion. In contrast, a white man who was detained after being charged with assault and overstaying his visa was then released by officials without requiring any reporting.¹⁹

The Arrangement perpetuates systemic racism and anti-Black racism, contrary to the legal protections for substantive equality detailed above.²⁰ Migrants experiencing intersecting forms of

¹² Amnesty International and Human Rights Watch, 2021, 36

¹³ Amnesty International and Human Rights Watch, 2021, 43

¹⁴ Amnesty International and Human Rights Watch, 2021, 41-42

¹⁵ University of Toronto, "We Have No Rights," 2015, 92-94

¹⁶ UN International Convention on the Elimination of All Forms of Racial Discrimination, <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-convention-elimination-all-forms-racial>

¹⁷ Amnesty International and Human Rights Watch, 2021, 64

¹⁸ Amnesty International and Human Rights Watch, 2021, 65

¹⁹ Amnesty International and Human Rights Watch, 2021, 66

²⁰ Efrat Arbel and Ketty Nivyabandi, Will British Columbia address systemic racism in immigration detention? Vancouver Sun, <https://vancouversun.com/opinion/efrat-arbel-and-ketty-nivyabandi-will-brit->

discrimination, such as ableism and racism, are disproportionately subjected to mistreatment and human rights violations when navigating the immigration system.

The Arrangement enables arbitrary detention

The provincial government has an obligation to uphold the right to liberty, security of person and freedom from arbitrary detention under Article 9 of the International Covenant on Civil and Political Rights.²¹ 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 regarded as arbitrary.²² Guidelines set out by the UN High Commissioner for Refugees clearly indicate that detention must not be arbitrary and any decision to detain must be based on an assessment of the individual's particular circumstances.²³

The UN Working Group on Arbitrary Detention emphasizes that immigration detention should never be punitive in nature and must not take place in facilities such as police stations, remand institutions, prisons and other facilities designed for those within the realm of the criminal justice system. They also note that detention conditions must be humane, appropriate and respectful.²⁴

Since there is no legislated detention limit in Canada, migrants face the risk of indefinite detention. Administrative challenges can result in lengthy detentions that sometimes lasts for years. Indefinite detention disproportionately impacts Black men, as they are the most likely to be held in provincial jails for months or even years.²⁵ The uncertainty that comes with prolonged and indefinite detention can be extremely distressing and result in devastating impacts on the health and well-being of migrants. In fact, the UN Special Rapporteur on Torture concluded that, in part because of its protracted or indefinite duration, such immigration detention inflicts serious psychological harm that can amount to prohibited ill-treatment.²⁶

Despite international guidelines, punitive treatment in provincial correctional centres is well documented. Migrants report being handcuffed, shackled, searched, subjected to solitary confinement, restricted to small spaces with rigid routines, placed in segregation and placed under constant surveillance with severely limited access to the outside world. There is evidence that immigration detainees who are held in provincial jails are confined in more restrictive settings than those held in CBSA-run centres and are more likely to be detained for longer periods of time.²⁷

[ish-columbia-address-systemic-racism-in-immigration-detention](#)

²¹ UN International Covenant on Civil and Political Rights, 1966, <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-civil-and-political-rights>

²² UN Special Rapporteur on Torture, 2018, 8, https://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session37/Documents/A_HRC_37_50_EN.docx

²³ UNHCR Detention Guideline, 2017, 15, <https://www.refworld.org/docid/50348953b8.html>

²⁴ UN Working Group on Arbitrary Detention, 2018, 6, https://www.ohchr.org/sites/default/files/Documents/Issues/Detention/RevisedDeliberation_AdvanceEditedVersion.pdf

²⁵ Amnesty International and Human Rights Watch, 2021, 65

²⁶ UN Special Rapporteur on Torture, 2018, 9, https://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session37/Documents/A_HRC_37_50_EN.docx

²⁷ Amnesty International and Human Rights Watch, 2021, 49-56

These experiences can have extremely negative impacts on detainees' psychological, emotional and physical well-being. There is evidence that even brief periods of time in detention can traumatize individuals and cause long lasting psychological harm such as depression and post-traumatic stress disorder.²⁸ For example, officials detained a single mother diagnosed with depression and post-traumatic stress after deeming her to be a flight risk. She was separated from her two children and placed in segregation for four days. Unsurprisingly, she describes her experience in detention as "traumatic."²⁹

Federal and provincial governments are currently violating their international human rights obligation to ensure freedom from arbitrary detention by housing detainees in provincial correctional centres. Maximum periods of detention should be set in legislation to protect against arbitrariness. Holding immigration detainees in provincial correctional centres also constitutes unjustified punitive and coercive treatment. The use of segregation is particularly troubling and may constitute torture or cruel, inhuman or degrading treatment.³⁰ These practices fail to meet international human rights guidelines that call for humane, appropriate and respectful conditions in custody.³¹

Conclusion

The Arrangement violates the right to substantive equality and undermines numerous other statutory and international human rights obligations. The ableism and racism embedded in the current system mean that people with disabilities and racialized people experience harsher treatment and are detained for longer periods of time. There is strong evidence that current practices contravene B.C.'s *Human Rights Code* and international human rights conventions including the Convention on the Rights of Persons with Disabilities, the International Covenant on Civil and Political Rights and the International Convention on the Elimination of All Forms of Racial Discrimination, as well as guidelines set out by the UN Working Group on Arbitrary Detention, the UN Committee on Economic, Social, and Cultural Rights and the Mandela Rules.

The use of provincial correctional centres to detain migrants constitutes unjustified punitive treatment and fails to meet the provincial government's responsibility to uphold the rights to substantive equality, liberty and security of the person and freedom from arbitrary detention and from torture, as set out in the International Covenant on Civil and Political Rights. The use of segregation may even constitute torture or cruel, inhuman or degrading treatment.

The review of the Arrangement is an opportunity for the provincial government to affirm the dignity and rights of migrants. Maintaining current practices means continued human rights violations contrary to the rights of migrants as protected in domestic and international law.

²⁸ Janet Cleveland and Cécile Rousseau, "Mental health Impact of Detention and Temporary Status for Refugee Claimants Under Bill C-31," 2012, 1664, <https://doi.org/10.1503/cmaj.120282>

²⁹ Amnesty International and Human Rights Watch, 2021, 21

³⁰ University of Toronto, "We Have No Rights," 2015, 90-91

³¹ UN Working Group on Arbitrary Detention, 2018, 6, https://www.ohchr.org/sites/default/files/Documents/Issues/Detention/RevisedDeliberation_AdvanceEditedVersion.pdf

Recommendations

To ensure that B.C. is respecting its statutory and international human rights obligations, B.C.'s Human Rights Commissioner recommends the provincial government:

- 1 Terminate any formal or informal agreement** with the federal government to hold immigration detainees in provincial correctional centres and end this practice
- 2 Lead the way among Canadian jurisdictions** by publicly encouraging other provinces to stop holding immigration detainees in provincial correctional centres
- 3 Call on the federal government** to gradually abolish immigration detention and expand the use of community-based alternatives that support individuals

The Government of British Columbia has taken an important first step by reviewing its Arrangement with CBSA. Through bold action to end the practice of immigration detention in provincial correctional centres, B.C. can lead the country on an issue that impacts some of the most marginalized members of our society.

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