

Statement Against Immigration Detention in Canada June 20, 2018

- Over the past 6 years, Canada has held approximately 45,000 people in immigration detention, and this year is projected to reach the highest number of immigration detainees since 2012.
- Studies have repeatedly confirmed the detrimental consequences of immigration detention on the mental health of detainees and their families.
- Canada's current immigration detention practices violate international human rights law.

Over the past several years, Canada's humanitarian tradition with respect to refugee protection has been reflected in resettlement interventions targeting vulnerable persons.

Unfortunately, this humanitarian tradition stands in stark contrast with Canada's immigration detention regime. Some of the most vulnerable among those who cross Canada's borders face a system that violates their human rights by depriving them of their liberty without adequate legal safeguards. Under the current system, vulnerable and marginalized individuals, including children and persons with mental health conditions, may be detained in jail or jail-like facilities without criminal charge, and without a countdown to their date of release. Despite the extraordinary powers of the Canada Border Services Agency to arrest and detain – which is the most invasive state act against an individual – the Agency remains the only significant police force in Canada that has no independent civilian oversight.¹ The Canadian government has begun to address some of these issues; but we can and must do better.

As a matter of principle, individuals should not be placed in immigration detention or separated from their families. If a person poses a danger to him or herself or to others, other legal measures outside the scope of immigration policy should be used to address such situations.

The human rights violations that individuals experience in immigration detention have devastating and lasting effects on their mental health and wellbeing, and may be fatal. This is particularly so for vulnerable individuals. In fact, deterioration of mental health is “one of the most significant observable phenomena in immigration detention.”² Studies have repeatedly confirmed that immigration detainees are at risk of developing symptoms of depression, anxiety disorder, and post-traumatic stress-disorder. This is particularly harmful to children, who may also have difficulty sleeping, lose their appetite for food and interest in play, and develop variety of physical symptoms. Even brief periods of confinement can have a severe and lasting impact on children's health and development.

¹ BCCLA, *Oversight at the Border: A Model for Independent Accountability at the Canada Border Services Agency* (June 2017), online: <<https://bccla.org/wp-content/uploads/2017/06/FINAL-for-web-BCCLA-CBSA-Oversight.pdf>>.

² IHRP, “We Have No Rights:” *Arbitrary Imprisonment and Cruel Treatment of Migrants with Mental Health Issues in Canada* (July 2015) at page 20.

Immigration detainees should not be held in maximum-security correctional facilities. Despite Canada's commitment to the rights of persons with disabilities, individuals with mental health issues are routinely detained in jails and jail-like facilities. According to Canada Border Services Agency, "Individuals with mental health issues may be detained in a provincial detention facility that provides access to specialized care."³⁴ Unfortunately, this specialized care is woefully inadequate as it often only amounts to medical prescriptions. Furthermore, the conditions of confinement in maximum-security jails or jail-like facilities only serve to aggravate detainees' existing mental health conditions or create new issues. Canada Border Services Agency has broad discretionary powers to determine where individuals are detained.

Immigration detainees should not be subject to indefinite detention. Canada is among the only Western countries whose immigration detention regime does not prescribe a legal limit to the length of detention. Other countries have adopted laws that prevent indefinite detention. For example, while the European Union Return Directive provides that detention of migrants pending removal may not exceed six months, some European countries provide for shorter periods of detention: 60 days in Spain, and 90 days in France and Italy. Some countries have placed further restrictions on the detention of a subset of immigration detainees who are seeking asylum: four weeks in Germany, and two weeks in Sweden. By contrast, in Canada, non-citizens may be deprived of their liberty for years on end. In one recent case, a man with suspected mental health issues was detained for more than 11 years because his identity could not be proven.

There are viable non-coercive measures not involving detention procedures that can be effective in managing immigration cases. Studies show that authorities can ensure a high rate of compliance with immigration proceedings when individuals are treated with dignity, understand their rights and duties, and receive adequate material support, including case-management and legal services, early and throughout the process. Evidence-informed and community based programs may include enforcement of specific reporting obligations, the use of cash bonds and guarantors, and suitable risk management programs for more challenging cases. They are also significantly more cost-effective than either detention or family separation. Importantly, these alternatives to detention allow for more humane and respectful treatment of vulnerable individuals, and facilitate the protection of their mental health, wellbeing, and fundamental rights.

We urge the Canadian government to cease the detention of an already vulnerable group. It is time for Canada to live up to its moral and legal obligations.

³ CBSA, *Arrests, detentions and removals*, online: < <https://www.cbsa-asfc.gc.ca/security-securite/detent/menu-eng.html> >.