

CANADIAN RED CROSS
Immigration Detention Monitoring Program (IDMP)
Annual Report
Monitoring Period – April 2022 to March 2023





Contents

Contents 2

List of Abbreviations 3

Executive Summary 4

1. Introduction: Overview of Activity Statistics 6

2. Immigration Holding Centres and Provincial Correctional Facilities 9

 2.1. Area of Monitoring 1: Conditions of Detention 9

 2.1.1. COVID-19 9

 2.1.2. Detention Numbers 9

 2.1.3. General Conditions of Detention 10

 2.1.4. Health 11

 2.2. Area of Monitoring 2: Treatment of Detained People 12

 2.2.1. Co-mingling in PCFs 12

 2.3. Recommendations on Conditions of Detention and Treatment 13

 2.4. Area of Monitoring 3: Access to Legal Guarantees and Procedural Safeguards 15

 2.4.1. Information and language 15

 2.4.2. Detention hearings 15

 2.4.3. Issues undermining due process 16

 2.5. Area of Monitoring 4: Ability to Maintain Contact with Family and Friends 17

 2.6. Recommendations on Procedural Safeguards and Family Contacts 17

3. People in Vulnerable Situations and People Detained for Longer Periods 19

 3.1. Observations: People in Vulnerable Situations and Conditions of Detention 19

 3.2. Observations: People Detained for Longer Periods and Conditions of Detention 20

 3.3. Recommendations 20

4. Short-Term Detention 22

 4.1. Observations 22

 4.2. Recommendations 22

Conclusion 24

ANNEX: Relevant Standards 25

CANADIAN RED CROSS
Immigration Detention Monitoring Program (IDMP)
Annual Report
Monitoring Period – April 2022 to March 2023



List of Abbreviations

AB	Alberta
ATD	Alternatives to Detention
BC	British Columbia
CBSA	Canada Border Services Agency
CRCS	Canadian Red Cross Society
DLO	Detention Liaison Officer
IDMP	Immigration Detention Monitoring Program
IFHP	Interim Federal Health Program
IHC	Immigration Holding Centre
IRB	Immigration and Refugee Board of Canada
IRPA	Immigration and Refugee Protection Act
NRAD	National Risk Assessment for Detention
NB	New Brunswick
NS	Nova Scotia
NGO	Non-Governmental Organization
ON	Ontario
PCF	Provincial Correctional Facility
POE	Port of Entry
PRRA	Pre-Removal Risk Assessment
QC	Quebec

CANADIAN RED CROSS
Immigration Detention Monitoring Program (IDMP)
Annual Report
Monitoring Period – April 2022 to March 2023



Executive Summary

Within the Canadian Red Cross Society (CRCS), detention monitoring is implemented by the Immigration Detention Monitoring Program (IDMP) in line with the Contract between the CRCS and the Canada Border Services Agency (CBSA) covering the period from February 23, 2021, to February 22, 2024, inclusive. In accordance with the Contract, this report illustrates CRCS IDMP activities conducted between April 2022 and March 2023.

Under this agreement, CRCS monitoring activities concentrate on the following four key areas in the detention of people under the Immigration and Refugee Protection Act (IRPA):

- The conditions of detention - the state of the detention setting, and services provided (e.g., facility, lighting, food recreation, healthcare and well-being of detained individuals in that environment).
- The treatment of detained individuals by facility staff, contractors, and other detained people (use of force, ill-treatment, personal dignity, and use of restraints...).
- The legal guarantees and procedural safeguards – the ability of detained people to exercise their human rights; access to procedural safeguards (under e.g., Canadian Charter of Rights and Freedoms, Article 36 of the Vienna Convention on Consular Relations, etc.), effective legal remedies and protection from arbitrary detention; and
- The detained person's ability to contact and maintain contact with family.

This report includes CRCS' observations and recommendations following a total of sixty-two (62) monitoring activities, including fifty-three (53) planned visits, three (3) discretionary visits and six (6) unanticipated visits in response to a notification to 30 individual facilities, holding persons detained under the IRPA, between April 2022 and March 2023.

Observations and recommendations are grouped into the following main themes:

- Immigration Holding Centres and Provincial Correctional Facilities
- People in Vulnerable Situations and People Detained for Longer Periods
- Short-Term Detention

Using the information gathered through observations, the CRCS makes the following key recommendations to the CBSA:

- Maintain acceptable detention conditions while responding to public health emergencies;
- Provide all three (3) IHCs with infrastructure, personnel, and procedures that permit holding people with complex profiles;
- Organize an orderly transition to a system that does not rely on co-mingling people detained for immigration reasons with people held under the Criminal Code;
- Expand the availability of specialized Alternatives to Detention (ATDs) to respond to a larger variety of detained people needs;
- Establish the position of specialized detention agents responsible for overseeing people with higher levels of risk detained at IHCs;
- Ensure people detained under IRPA have access to leisure, cultural, and educational activities;
- Maintain regular and adequate access to areas outside the cell for individuals detained under IRPA;
- Provide full and timely access to health services covered by the IFHP;
- Review the policy on the use of restraints and strictly monitor their application;
- Ensure and monitor access to CBSA info packages and other important materials;
- Provide professional interpretation services for key moments of detention and, ideally, for day-to day communication;
- Offer a voluntary transfer to an IHC for those who do not have access to government funded Legal Aid services;
- Allow individuals detained under IRPA to appear in civilian clothes and free of restraints in front of the authority deciding on their detention;
- Explore how various formats of Immigration and Refugee Board of Canada (IRB) hearings (in-person, videoconference, telephone) influence the results of a hearing;
- Provide free local and international calls to contact family;
- Offer restricted internet access along with translation applications and electronic tablets for the purpose of exchanging text messages and images;
- Allow contact visits at all detention locations, when the public health situation permits;
- Highlighting that no one detained under IRPA should be in a PCF, avoid holding people in vulnerable situations in those facilities;
- Receive initial and ongoing mental health screening to help identify those at risk of suicide;

CANADIAN RED CROSS
Immigration Detention Monitoring Program (IDMP)
Annual Report
Monitoring Period – April 2022 to March 2023



- End the practice of placing children in facilities used for immigration detention, and develop ATDs to permit family unity outside of detention when liberty is not possible;
- As often as possible, carry out short term detention in open spaces without restraints;
- Improve short term detention cell design in case of renovations or building new facilities;
- Establish a clear policy permitting access to personal phones in short term detention (under supervision if needed).

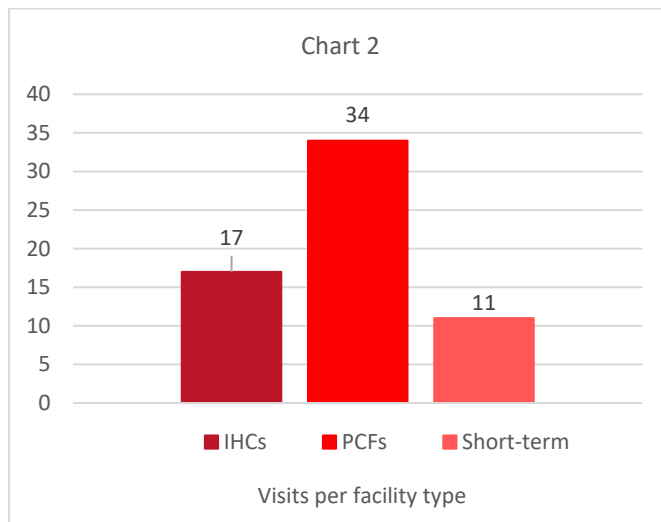
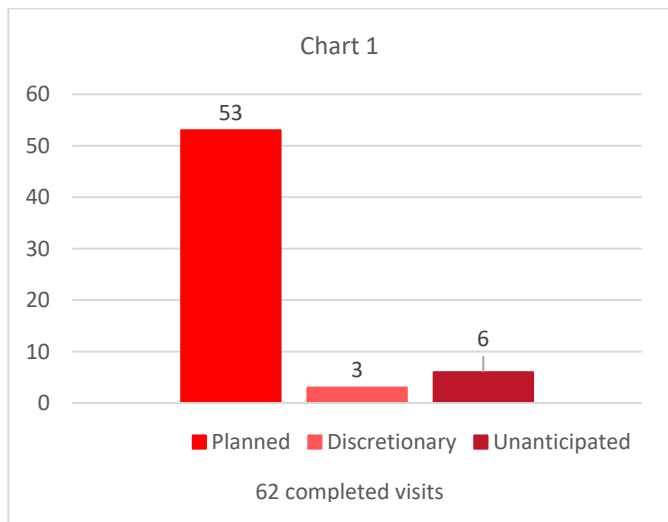


1. Introduction: Overview of Activity Statistics

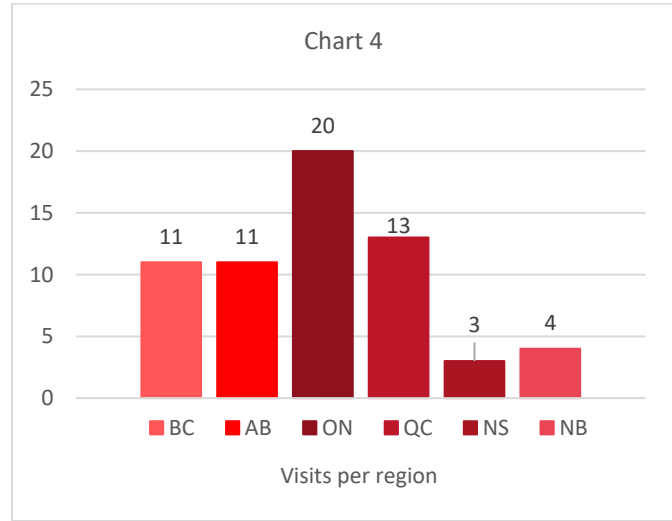
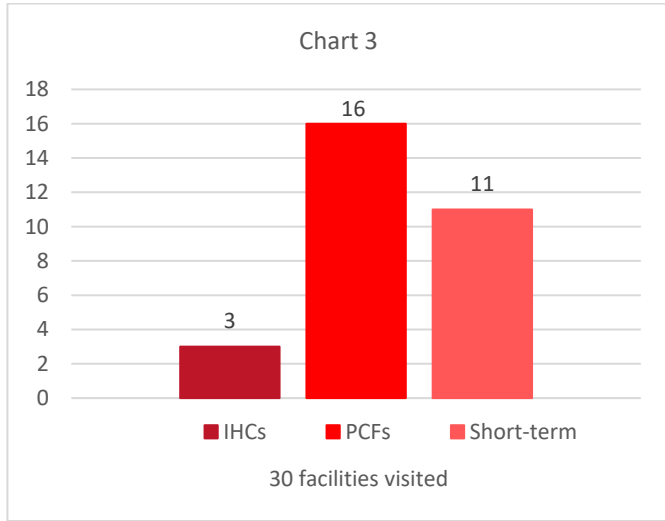
The CRCS is a humanitarian, impartial, neutral and independent entity. Its mandate, defined in Canadian law and in the Statutes of the International Red Cross and Red Crescent Movement, is to mitigate and alleviate human suffering. The CRCS offers independent oversight of detention under the IRPA to foster a protective environment in which individuals held for immigration purposes receive humane treatment and where their human rights and innate dignity are upheld, aligning with international and national standards. During visits to places of detention, the CRCS monitors the conditions of detention and treatment of people held administratively under the IRPA in federal government-run facilities and detention facilities under the management of provincial authorities or other authorities. In accordance with the agreement between the CRCS and the CBSA, this report reflects CRCS IDMP activities carried out between April 2022 and March 2023.

According to the situation in the monitored facilities, and following appropriate guidelines, monitoring activities were mostly in-person and at times remote. In special circumstances, monitoring activities were hybrid, with part of the activity carried out in person and another part being remote.

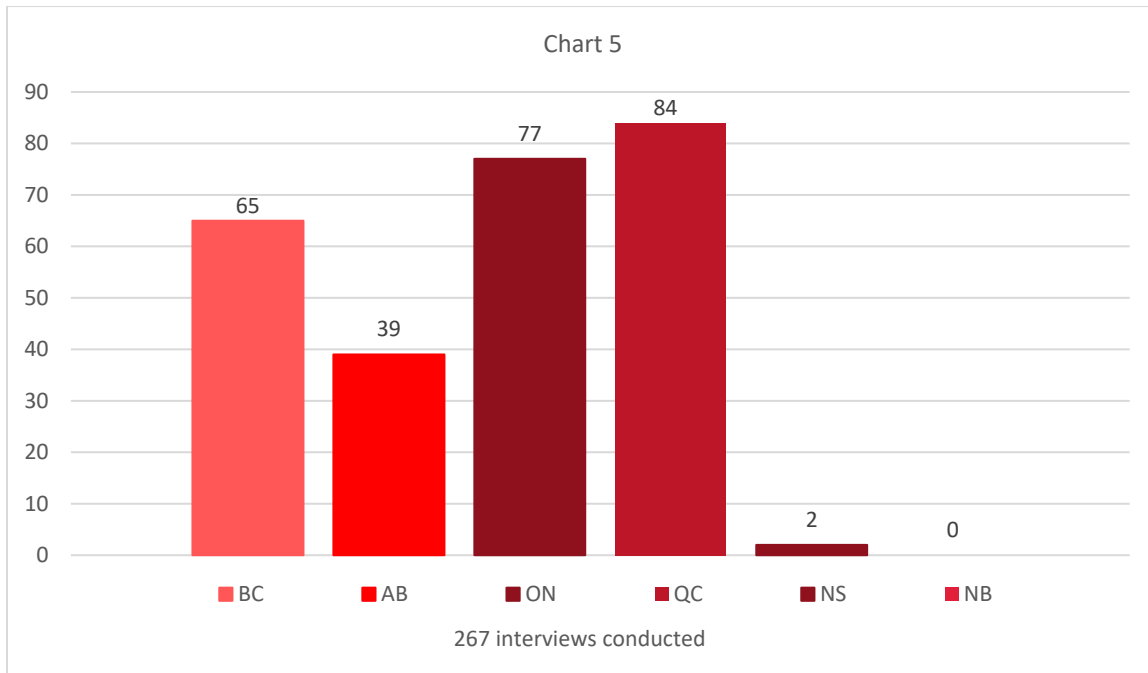
Throughout this reporting period, a total of sixty-two (62) monitoring activities were conducted, including fifty-three (53) planned monitoring activities, three (3) discretionary monitoring activities and six (6) monitoring activities in response to notifications (chart 1). The CRCS conducted seventeen (17) monitoring activities to Immigration Holding Centres (IHCs), thirty-four (34) monitoring activities to Provincial Correctional Facilities (PCFs), and eleven (11) monitoring activities to short-term detention facilities (chart 2). These were carried out in three (3) IHCs, sixteen (16) PCFs, and eleven (11) short-term detention facilities (chart 3). Chart 4 illustrates the visits completed per geographical region.



CANADIAN RED CROSS
Immigration Detention Monitoring Program (IDMP)
Annual Report
Monitoring Period – April 2022 to March 2023



Throughout the reporting period, the IDMP team conducted 267 interviews with individuals detained under the IRPA in IHCs and PCFs: 65 in British Columbia; 39 in Alberta; 77 in Ontario; 84 in Quebec; 2 in Nova Scotia (chart 5).



Moreover, the CRCS carried out information sessions to present its mandate to relevant authorities, and held meetings with stakeholders, such as CBSA representatives at CBSA headquarters and regional levels, as well as personnel of provincial correctional services, local NGOs supporting persons detained under the IRPA, and other stakeholders – to further promote a protective environment where people detained for immigration reasons are treated humanely and where their inherent human rights and dignity are respected.

CANADIAN RED CROSS
Immigration Detention Monitoring Program (IDMP)
Annual Report
Monitoring Period – April 2022 to March 2023



The IDMP methodology places emphasis on the needs of people detained under IRPA. To conduct a thorough analysis of conditions of detention the IDMP researches and gathers as much information as possible through various sources: individuals detained for immigration reasons, CBSA and provincial officials, professionals engaged in the care of detained persons and observations conducted by the IDMP personnel. The findings are evaluated and triangulated to ensure the credibility and consistency of the obtained data. With this analysis, IDMP formulates practical recommendations to the detaining authority. Communicating with the authorities through regular meetings at national and provincial levels is an important element of the IDMP's methodology and vital for assessing its influence. Through visits and meetings at the local, provincial, and national levels, the goal of the CRCS is to encourage authorities to improve detention conditions and to promote the rights of those held under their authority.

Visits adhere to a standard procedure that encompasses the following steps:

- An initial discussion with the facility management;
- A tour of accommodations and facilities used by detained people (cells, rooms and dormitories, common areas, healthcare facilities, etc.);
- Private conversations with detained people who wish to speak with IDMP team members;
- A concluding discussion with the detaining authority to discuss observations and recommendations.

While visiting places of detention, the CRCS evaluated these places against four areas of its mandate:

1. Conditions of detention;
2. Treatment of detained people;
3. Access to legal guarantees and procedural safeguards; and
4. Ability to contact and maintain contact with family.

Related to these areas, IDMP explored the following themes which are discussed in the following sections of this report: 1) Immigration Holding Centres and Provincial Correctional Facilities; 2) People in vulnerable situations, and people detained for longer periods; and 3) Short-term detention facilities.

Before sharing the findings made during the monitoring period and the recommendations developed in response, the IDMP team wishes to express its gratitude for the support of CBSA, and the PCF staff and management who facilitated access to detention facilities, and to the individuals detained therein.



2. Immigration Holding Centres and Provincial Correctional Facilities

In line with its administrative nature, conditions of immigration detention should be minimally restrictive and non-punitive; furthermore, authorities must provide adequate services. People detained for immigration reasons should be subject to a humane treatment that respects the administrative nature of their detention¹. Procedural safeguards must be in place, including access to information on the detention facility and the immigration process, the ability to communicate confidentially with one's lawyer and consular representatives, and adequate interpretation for those who do not understand the official language spoken in the region they are detained. Finally, people being detained for immigration reasons must be allowed to maintain contact with the outside world, in particular contact with family through, among other means, telephone and video calls as well as in-person contact visits.

The use of correctional facilities, including but not limited to prisons, jails, and facilities designed or operated as prisons or jails, should be avoided. These environments expose people detained for administrative reasons to policies and procedures designed to manage people within the criminal justice system. If people detained under the IRPA² are nevertheless held in correctional facilities, given the administrative nature of immigration detention, they should be separated from people who are being held under the Criminal Code³ – which is a well-established principle under international law.

2.1. Area of Monitoring 1: Conditions of Detention

2.1.1. COVID-19

In May 2023, the World Health Organization stated COVID-19 had been on a downward trend for over one year and determined it “no longer constitute[d] a public health emergency of international concern”⁴. This trend was also felt in Canada and at the facilities visited by IDMP. If, in the previous reporting period, recent COVID-19 outbreaks had been reported in about half the monitoring activities, the situation in the period under review was far better with less than 15% of the visited facilities having reported outbreaks at the time of IDMP monitoring visits. During the monitoring period, three (3) out of six (6) provinces where monitoring activities occurred lifted public health measures responding to COVID-19. Consequently, at seven (7) facilities monitored by IDMP, intake isolation was terminated; however, at some facilities, isolation could continue for people who showed symptoms of COVID-19. IDMP does not comment on the public health aspect of the decision, leaving it to relevant authorities, but does note that conditions in intake isolation in some facilities were highly restrictive, and terminating the intake isolation policy had a positive impact on the immediate wellbeing of detained people. At the other 12 monitored facilities, intake isolation remained in place throughout the monitoring period⁵.

2.1.2. Detention Numbers

Generally, against the last two (2) monitoring periods, total numbers of detention under IRPA increased significantly, doubling when compared to 2021-22 and almost quadrupling from 2020-21 levels. However, numbers between 2020 and 2022 were very low given the COVID-19 pandemic and total detention numbers in 2022-23 were at the lower range of what was observed during the 8 years prior to the coronavirus outbreak⁶.

At all three IHCs, increases in population were observed when compared to the previous monitoring period. However, two of them remained under 50% of their official capacity during IDMP monitoring activities; the third IHC also remained well under its official capacity, but the situation was more complicated due to staffing issues which reduced its official capacity for several months. If, in the early months of the pandemic, the general population had decreased in many PCFs, they quickly started to trend up again and as observed in previous reports, they had returned to pre-COVID levels in many instances. In the current period, the upward trend continued and the general

¹ ICCPR 10(2)(a); PBPPDLA XIX; CMW 17(2),(3); SMR 11; UNHCR DG 48 (iii); GCM 29 (a)-(c).

Also see Human Rights Council Working Group on Arbitrary Detention, A/HRC/7/4, 10 January 2008 “Furthermore, the Working Group feels inclined to remind Governments of the principles developed in its Deliberation No. 5, particularly principles 3, 6, 7, 8, and 9: (...) On the obligation of States to place asylum-seekers or immigrants in premises separate from those persons imprisoned under criminal law”, paragraph 52.

See, in addition, the Inter-American Commission on Human Rights, Human Rights of Migrants, resolution 03/08, 25 July 2008, “As international law establishes, migrants may not be held in prison facilities. The holding of asylum seekers and persons charged with civil immigration violations in a prison environment is incompatible with basic human rights guarantees”, p. 2.

² Immigration and Refugee Protection Act (S.C. 2001, c. 27).

³ Criminal Code (R.S.C., 1985, c. C-46).

⁴ Statement on the fifteenth meeting of the IHR (2005) Emergency Committee on the COVID-19 pandemic (who.int)

⁵ Conditions in intake isolation during the period under review are discussed in section 2.1.3 General Conditions of Detention.

⁶ <https://www.cbsa-asfc.gc.ca/security-securite/detent/stat-2012-2022-eng.html>; <https://www.cbsa-asfc.gc.ca/security-securite/detent/qstat-2022-2023-eng.html>.

CANADIAN RED CROSS
Immigration Detention Monitoring Program (IDMP)
Annual Report
Monitoring Period – April 2022 to March 2023



population in over two thirds of PCFs visited by IDMP had significantly increased when compared to the previous monitoring period. In over one third of IDMP visits to PCFs, the total population had reached more than 90% of the facility's official capacity, and in some instances was even above capacity, which was often reduced because of units being used for intake isolation. Overpopulation at PCFs and its consequences were an issue of concern. While overpopulation is linked to realities outside the scope of immigration detention, it nevertheless adversely affected the conditions of detention of people held under IRPA and placed in provincial facilities¹.

Overcrowding is not necessarily a facility wide phenomenon; it can be limited to certain units and usually results in triple-bunking – or the placement of three people in a cell designed to hold two. Triple-bunking was reported in six (6) monitoring activities during intake isolation and in fourteen (14) monitoring activities in units not used for COVID-19 isolation. As discussed below in section 2.1.3 General Conditions of Detention, IDMP observed that in five (5) activities where triple-bunking during intake isolation was reported, people had less than an hour out of their cells daily, or daily time out of cell was not provided at all. Regarding triple-bunking outside of intake isolation, in half of the fourteen (14) monitoring activities where it was reported, people were not allowed out of their cells for two (2) hours a day², sometimes not even daily. Conditions in these situations can affect a person's dignity, for example, one individual who was triple-bunked and was sleeping on the floor next to the toilet complained that their bedding was soiled with urine spatter from their cellmates.

2.1.3. General Conditions of Detention

During the monitoring period, CBSA inaugurated a new IHC in Laval to replace the older facility. The new structure integrates several interesting architectural features that soften the detention environment, such as numerous large windows permitting natural light to enter the space and giving a view to nature surrounding the facility. The choice of colors and materials creates a less institutional environment. Also, the new facility solves issues encountered at the former Laval IHC, such as lack of air conditioning which was a problem during the summer months. Despite its progressive design, it already seemed to require modifications to adapt to anticipated changes in the system of immigration detention in Canada. For instance, the new IHC in Laval does not yet include specialised units for people detained under IRPA with the most complex profiles, which is needed given recent developments. Moreover, the building includes indoor and outdoor spaces for children. This may signal the intention to continue detaining minors, which is against the pledge to end this practice included in the Global Compact for Safe, Orderly, and Regular Migration³, that the Government of Canada expressed support for. Although facilities can be renovated and spaces to some extent redesigned, the CRCS is concerned this will require additional efforts and may lead to further delays once the need to adapt facilities to the changing realities of immigration detention arises.

Since the start of the pandemic, IDMP did not find major issues with conditions during intake isolation at the three (3) IHCs. In the period under review, one (1) of the IHCs lifted intake isolation. Additionally, where and when intake isolation was in place, or isolation was required due to testing positive for COVID-19 or refusing to be tested, freedom of movement within a unit remained possible and basic services were accessible. Outside of COVID isolation, no major issues were identified with conditions of detention at these three (3) centres. Detained people enjoyed freedom of movement within their units, being able to leave their rooms at will.

In the two previous National Annual Reports – largely coinciding with the first two (2) years of the pandemic – IDMP reported serious problems related to conditions of detention in many PCFs, both inside and outside of COVID-related isolation. These problems persisted into the period under review, mostly in facilities still enforcing intake isolation, while improvements were seen in the facilities that lifted COVID-19 restrictions. For instance, in nearly three quarters of monitoring activities at PCFs, people in COVID-related isolation reported being allowed out of cell less than two (2) hours per day⁴; in over one third of the monitoring activities at PCFs, they were not even being let out of their cells every day. Outside of COVID-19 isolation, lack of time out of cell remained a major issue. It was reported in a quarter of visits to PCFs that people outside COVID-related isolation were not allowed out of their cells daily, which remains very concerning. This extremely restrictive practice greatly limits access to basic services such as showers, and the possibility to contact and maintain contact with family members and legal representatives, since telephones are in the common areas. Moreover, it can affect detained people's mental health. Often the issue was due to staff shortages, which became more acute during the summer months, to security incidents prompting lockdowns or to management of specialised units with detained people having to be let out in small groups because of incompatibilities. IDMP notes that in three (3) PCFs visited during the monitoring period, there were medium security units with rooms or dorms, in which some of those detained under IRPA were placed. These afforded a greater level of freedom of movement and less restrictions.

¹ It must be noted that official overall capacity is not a complete indicator, since capacity must be also measured at the unit level, and against the capacity of a facility to offer basic services.

² The CRCS notes that 2 hours out of cell is a threshold to define solitary confinement, and not a standard for time of cell for people detained under IRPA— who should be granted as much freedom of movement as possible, with reasonable limits.

³ GCM 29(h).

⁴ The CRCS notes that people under administrative detention should be granted as much freedom of movement as possible, with reasonable limits.

CANADIAN RED CROSS
Immigration Detention Monitoring Program (IDMP)
Annual Report
Monitoring Period – April 2022 to March 2023



For those under COVID-related isolation at two (2) out of the three (3) IHCs, daily access to open air was not always possible even though such a policy was in place in at least one of them. Moreover, activities at all three (3) IHCs during isolation were reported to be limited. Outside of isolation, greater freedom of movement meant detained people could enjoy a broader range of activities. These included foosball, library, a prayer room, yoga classes at the Toronto IHC and language classes at the Laval CSI.

Access to open air was reportedly not possible on a daily basis – or sometimes not possible at all – inside and outside COVID isolation during nearly half of the monitoring visits to PCFs. IDMP noted that several newer facilities had concrete yards, some adjoining the common area of the unit thus easily accessible. However, these did not constitute open air; they resembled large rooms with windows that could be opened or that had a partially retractable roof. Access to activities during COVID-related isolation in PCFs were said to be limited or non-existent. When offered, they consisted of reading – for those who understood the language in which available books were written – and watching television – for those who had a TV in their unit and could see it from their cell. Outside of COVID-related isolation, available activities at the PCFs varied greatly. Most facilities had televisions visible from the common area and from some cells, board games and a library program. A few facilities offered more elaborate recreational activities, such as video games and tablets to watch movies or music. Sports, such as basketball, were played in the yard (when access was granted); some facilities had weightrooms and indoor gymnasiums. Many facilities organized religious services and classes for individuals interested in completing their high school education. However, the possibility of participating in these activities was often hindered by factors such as lack of time out of cell, lack of staff to accompany detained people to different parts of the facility, and ongoing public health measures. For example, exercise machines were accessible when they were placed inside the unit – provided detained people were allowed outside their cells – but harder to access if located outside the unit. In certain specialised units, such as protective custody where people held under IRPA were sometimes placed, detained people were separated from the general population, and even from others in protective custody due to incompatibilities. In those cases, engaging in activities outside the unit was usually not possible because of security concerns.

IDMP observed that support provided by Detention Liaison Officers (DLOs), or by other officers carrying out DLO functions – can help detained people access essential services such as medical care or international calls to their families. Their added value becomes even more significant when dealing with detained people who require interpretation services, as they can facilitate communication with interpreters. While in some facilities, the interaction between DLOs and detained people was consistent, occurring either in person or through the phone, in others their presence was reported to be inconsistent. In about a quarter of visits to PCFs, detained people mentioned that they had never been in contact with a DLO or had infrequent discussions with them. In some instances, they were uncertain whether they had spoken to a DLO or to another CBSA officer.

2.1.4. Health

Delays in accessing health care in IHCs were reported as reasonable, ranging from a few minutes to a maximum of one (1) week. None of detained individuals mentioned requiring health services that were not covered by the health plan – the Interim Federal Health Program (IFHP) and its supplemental coverage. The situation was reported as being different in PCFs – during ten (10) monitoring activities in these facilities, the process of receiving medical attention after making a request took two (2) weeks or more. In some cases, detained people reported that it could take up to six (6) weeks, and some mentioned having to submit several requests.

In its previous reports, IDMP mentioned that medical coverage varied depending on the facility in which a person was detained – IFHP at IHCs or provincial plans at PCFs. This problem persisted, resulting in inconsistent medical services coverage, depending on the detained person's location. IDMP understands CBSA is working on establishing a medical services framework to address the issue.

The availability of mental health services varied greatly from one facility to another. It was possible to access psychiatric services at all the IHCs and at PCFs in five (5) of the six (6) provinces where activities took place; however, the delays in obtaining an appointment varied from one institution to another. Notably, mental health services were unavailable in PCFs monitored in one (1) province. Furthermore, while all three (3) IHCs provided the services of a psychologist, this was not the case in all the monitored PCFs – either because this position was unfunded, or, if funded, remained vacant. Additionally, programming such as Alcoholics Anonymous, Narcotics Anonymous, anger management, and suicide prevention, among others, was offered at some facilities but not at others. IDMP noted that it encountered several detained people struggling with addiction who spoke of a lack of addiction counseling.

One (1) PCF had reported difficulties in staffing the position of a nurse at intake to carry out medical assessments of detained people upon admission to the facility. This position was not filled throughout the year, and as a result, medical examinations were not always possible. However, through discussions with facility management, IDMP confirmed they were aware of the issue and were working to resolve it.



Some individuals who did not speak the official language of the region where they were being detained under IRPA mentioned receiving medical treatment without understanding why they were receiving it. For ethical reasons, medical treatment is conditional to informed consent from the person receiving it, and in these cases, this consent did not seem to have been obtained.

2.2. Area of Monitoring 2: Treatment of Detained People

In five (5) visits to PCFs, it was observed that people could be placed alone in a cell during intake isolation, where they were confined to the cell for 22 hours or more per day with no opportunity for meaningful contact¹, creating conditions of solitary confinement. Moreover, people detained in PCFs reported being placed in special units (segregation) for various reasons, some for mental health reasons, others for disciplinary issues. Time spent outside of the cell in these units was limited, and access to the yard – in an open air environment or otherwise – was often not possible. Due to the isolation, meaningful contact with others was limited. These conditions could constitute solitary confinement, depending on how the regime was applied. IDMP emphasizes that solitary confinement has a strong detrimental effect on a person's wellbeing and remains a major concern.

Being a witness or a victim of threats and violence at the hands of other detained people was reported in almost all the visits to PCFs². Assaults and the fear they generated were often described as a part of life in a PCF by those detained at these facilities. In IHCs, threats and violence were reported to be much less frequent, with detained people mentioning isolated events in two (2) of the ten (10) planned monitoring activities. The use of force by correctional officers in PCFs was reported in nearly half of the visits to these facilities. IDMP notes it was not able to determine whether these instances constituted a legitimate use of force. Use of force at IHCs was only reported during one (1) monitoring activity. Again, these situations were reported as uncommon in IHCs.

When people detained under IRPA are transferred in and out of detention facilities, they are often put in restraints, which included 1) handcuffs; 2) handcuffs and leg restraints; and 3) a belt with straps or cuffs to immobilise a person's wrists along with leg restraints. During the monitoring period, IDMP observed that use of restraints during transfers was inconsistent, and often excessive considering the risk posed by the person. The following issues were reported:

- 1) CBSA-contracted guards were not mandated to assess the level of risk posed by a detained individual, and, in the absence of CBSA directives, they must apply blanket rules which tend to be excessive (i.e., restraints to wrists and ankles in all cases);
- 2) In cases of transfers carried out by staff at some PCFs, there was no individual assessment and, as a rule, every detained person wore restraints to the hands which were fixed to a belt as well as restraints to the feet regardless of the risk each individual posed;
- 3) Levels of restraint changed within different parts of a same trip without any security incidents justifying the change, which suggests inconsistencies in the evaluation of the risk posed by detained individuals;
- 4) Not granting exceptions to the use of restraints during transport when they are justified, resulting in the use of restraints when unnecessary. For example, IDMP received reports of handcuffing an elderly person who clearly posed no risk of escape, restraining a person with disability for whom escape would be highly improbable, or restraining a person who had voluntarily turned themselves in to CBSA and showed no intention to escape;
- 5) Detained people reported being handcuffed to an object such as a hospital bed, which can pose a risk of injury should the person fall out of the bed;
- 6) A detained person mentioned their handcuffs were put on too tight, causing them pain, and due to a language barrier, the officer could not understand their complaint.

The CRCS emphasizes that blanket policies on the use of restraints in the absence of individual assessments and excessive use of restraints are in contradiction with the legal principle of necessity and the obligation to "use the minimum necessary force required to meet the law enforcement objective"³. Excessive use of restraints can compromise a person's dignity, cause unnecessary discomfort and pain, and, in some cases, lead people to refuse being sent to a hospital for treatment.

2.2.1. Co-mingling in PCFs

With regards to detention numbers and the reliance on PCFs, the dramatic changes caused by the COVID-19 response distorts a comparison with the two (2) previous monitoring periods, which coincided with the first two (2) years of the pandemic, and the number of people detained under IRPA and placed in PCFs in 2022-23 has risen when compared to this period. However, when compared to the

¹ As mentioned in the footnote on p.9, the CRCS notes that 2 hours out of cell is a threshold to define solitary confinement, and not a standard for time out of cell for people detained under IRPA – who should be granted as much freedom of movement as possible, with reasonable limits.

² Violence was reported in 29 monitoring activities to PCFs out of 33.

³ Resource Book on the Use of Force and Firearms in Law Enforcement, UNODC & OHCHR, New York, 2017, p 17.

CANADIAN RED CROSS
Immigration Detention Monitoring Program (IDMP)
Annual Report
Monitoring Period – April 2022 to March 2023



pre-COVID years, one can observe a change in patterns and IDMP notes that detention numbers remain below the levels reported in the eight (8) years¹ prior to 2020-21, which could indicate the positive results of CBSA strategies applied to reduce reliance on PCFs.

The reliance on PCFs for people detained under IRPA remains an issue of concern to the CRCS. As consistently reported in previous National Annual Reports, in all but one (1) PCF, people detained under IRPA were co-mingled at the cell and/or unit level with people detained under the Criminal Code – including during intake isolation. The one facility with a dedicated immigration unit may house people held under IRPA in other units, such as the medical unit or a general population unit, depending on the circumstances. While this approach manages to reduce co-mingling, it is unable to eliminate it entirely.

While in PCFs, people detained under IRPA receive the same treatment as those detained under the Criminal Code. For example, IDMP visited PCFs in six (6) provinces, and in five (5) of them, detained people are required to wear a correction facility inmate uniform. Moreover, strict security requirements were in place, such as strip searches being a common practice.

At PCFs in five (5) of the six (6) provinces where IDMP conducted visits, people detained under IRPA go through the same classification process as those held under the Criminal Code. Managers in some facilities reported people under IRPA were often classified as higher security, either because impending removal was seen as heightening the security risk or because there was a presumption that they were dangerous, especially if an IHC did not want to receive them. IDMP does not believe these criteria, in isolation, should justify placement in high security units. In the sixth province, people held under IRPA were automatically placed in high security units by provincial correctional instruction. However, in one (1) monitored PCF in that province, facility management said that they often made exceptions based on their own evaluations and placed people held under IRPA in units with lower security profiles.

IDMP spoke with people detained at three (3) PCFs who mentioned not having criminal records, neither in Canada nor outside the country. At one of these facilities, people without a criminal record are regularly observed despite the relative proximity of an IHC, which was a major concern. PCF management in a fourth facility also confirmed having received people without any prior criminal history. This situation is very difficult to understand since current procedures permit transfers to IHCs, and the NRAD score of these individuals likely permitted such a transfer. Moreover, IHCs had available space, with two (2) of these three (3) centers maintaining a population below 50% of their capacity during the monitoring period, and the third one had to reduce its capacity for approximately six (6) months due to staffing issues but remained below 50% the rest of the time. Meanwhile, as stated above, many PCFs struggled with overcrowding, including two (2) PCFs where people without a criminal past were held. In many cases, these detentions extended beyond the 48-hour and the 7-day hearing, so the argument of an imminent release did not seem to apply.

2.3. Recommendations on Conditions of Detention and Treatment

While recognizing that the current situation may justify the use of a preventative isolation or a medical lockdown period, as long as it is under the advice of medical and/or public health authorities, the CRCS recommends ensuring that measures are in place to maintain acceptable detention conditions while responding to the threat posed by public health emergencies. Regular and adequate access to areas outside the cell, to showers, and to open air should be maintained even if adjusted to ensure adequate public health measures. Moreover, regular access to telephones or other means of communication must be provided to ensure continuous communication with legal counsel and/or consular authorities as well as meaningful interaction with family and friends, among others. Confidentiality of information during contact with lawyers and detention hearings should also be ensured.

The CRCS highlights that the separation of detained people according to certain categories, which include the legal reason for their detention, is a recognized international standard², and the placement of people held for administrative reasons, such as detention under IRPA, with people held under the Criminal Code is in clear contradiction to this standard. Referring to the announcements by eight provincial governments that will withdraw from their agreements with CBSA on the use of their PCFs in the coming months, the CRCS urges the CBSA to organize an orderly transition to a system that does not rely on co-mingling people detained for immigration reasons in correctional facilities, while seeking the input of outside organizations with different fields of expertise related to immigration detention.

¹ <https://www.cbsa-asfc.gc.ca/security-securite/detent/stat-2012-2023-eng.html>.

² ICCPR 10(2)(a); PBPPDLA XIX; CMW 17(2),(3); SMR 11; UNHCR DG 48 (iii); GCM 29 (a)-(c).

Also see Human Rights Council Working Group on Arbitrary Detention, A/HRC/7/4, 10 January 2008 “Furthermore, the Working Group feels inclined to remind Governments of the principles developed in its Deliberation No. 5, particularly principles 3, 6, 7, 8, and 9: (...) On the obligation of States to place asylum-seekers or immigrants in premises separate from those persons imprisoned under criminal law”, paragraph 52.

And Inter-American Commission on Human Rights, Human Rights of Migrants, resolution 03/08, 25 July 2008, “As international law establishes, migrants may not be held in prison facilities. The holding of asylum seekers and persons charged with civil immigration violations in a prison environment is incompatible with basic human rights guarantees”, p. 2.

CANADIAN RED CROSS
Immigration Detention Monitoring Program (IDMP)
Annual Report
Monitoring Period – April 2022 to March 2023



The CRCS recommends CBSA explores the following avenues:

- (i) Continue expanding the availability of specialized Alternatives to Detention (ATDs) which are equipped to respond to a larger variety of needs¹ and provide people detained under the IRPA with information to better understand ATDs, both through the CBSA ATD programs and other avenues;
- (ii) Provide all three IHCs with infrastructure, personnel and procedures that permit holding people with even more complex profiles, while ensuring they are held according to international and national rules;
- (iii) Create the position of specialized detention agents who would be responsible for overseeing people with higher levels of risk detained at IHCs. Among others, their tasks could include determining the required use of restraints during transfers (when restraints are deemed necessary). This personnel, and other CBSA staff working with detained people, should receive adequate training in relevant human rights standards related to security and the use of force.
- (iv) Should the Government of Canada decide on building new IHCs, consultations with relevant stakeholders should map out how immigration detention will change in the coming years (and decades) – factoring in expanded ATDs, the necessary termination of the policy to rely on correctional facilities and the Government's pledge to end the practice of placing children in immigration detention. For example, new facilities should be designed to hold people detained under IRPA who are currently in PCFs, and do so in conditions that are in line with immigration detention standards.

Until durable solutions to co-mingling are enacted, the CRCS recommends:

- (i) CBSA improves the detention placement assessment process determining if a person is eligible to be placed in an IHC rather than in a PCF, taking into account all available factors that can lead to a more precise assessment of their current behaviour, the risk they pose and the needs they have²;
- (ii) Requiring CBSA agents to offer a voluntary transfer to an IHC to individuals whose NRAD score permits such a placement – like those with no criminal record – including across provinces or regions, while considering proximity to family and in cooperation with other authorities involved³;
- (iii) CBSA provides people detained under the IRPA with information on the process a person placed in a PCF needs to follow to be transferred to an IHC, and if not possible, the reasons justifying the decision to refuse such transfer.

CRCS reiterates that conditions of immigration detention must not be disproportionately or unnecessarily restrictive. Access to services must be comparable to those found outside detention and the treatment of detained people must be adequate, taking into account their legal status as people detained for administrative reasons and level of risk. The CRCS highlights that CBSA is ultimately responsible for the conditions in which people under IRPA are detained and the treatment they receive – independent of the fact that the service may be contracted out to a third party. Accordingly, CRCS recommends that until the practice of relying on PCFs is terminated, CBSA takes all necessary measures to ensure conditions and treatment in these facilities are adequate for people in administrative detention with regards to, for example, the creation of dedicated immigration units, adequate allowance of time out of cell, as well as regular access to showers, to open air and to means of communication with the outside world. Also, the CRCS recommends that the CBSA ensures people detained for immigration reasons have access to leisure, cultural and educational activities regardless of their place of detention as they can contribute to reducing the negative effects of detention by relieving stress and promoting positive interactions with others.

The CRCS acknowledges that DLOs were regularly present in many PCFs. The CRCS reiterates that DLOs, or other officers with DLO functions, should hold regular meetings with all people detained under IRPA and held in provincial institutions, regardless of whether they had previous interaction with other CBSA officers. Special attention should be given to people in intake isolation, medical isolation (including droplet precaution), or other types of long-term lockdowns.

The CRCS recommends that the CBSA, regardless of the place of detention, provides people detained under the IRPA with full and timely access to health services covered by the IFHP or equivalent coverage. Special attention should be given to meeting the healthcare needs of the individuals in vulnerable situations, including those diagnosed with mental health conditions and those who have declared a need for mental health support.

¹ For a non-exhaustive list of vulnerabilities, see footnote 1, page 4.

² Including correctional authority's evaluation of their rehabilitation, adhesion to a drug or alcohol rehab program and the level of security where they were placed at the end of their criminal sentence.

³ Such as, for example, the Immigration and Refugee Board of Canada (IRB) and courts (in cases, where a person charged with a criminal offence is released on bail but remains detained under the IRPA).

CANADIAN RED CROSS
Immigration Detention Monitoring Program (IDMP)
Annual Report
Monitoring Period – April 2022 to March 2023



The CRCS recommends the CBSA review its policy on the use of restraints during transportation, to increase the number and type of cases where people being detained under IRPA can be transported without the use of restraints. The CRCS highlights that the application of restraints should only be permitted when they are legal, necessary, and proportionate, after an evaluation of the risk posed by the individual and the specific situation. The use of restraints should be the last recourse, not be used longer than is strictly necessary and less incapacitating means should be preferred. Moreover, CRCS recommends CBSA implements mechanisms that enhance accountability within the process and evaluates each case by considering its unique circumstances. For example, in cases where individuals detained under IRPA decline a transfer to a hospital because they refuse to wear restraints, alternatives should be explored and provided.

2.4. Area of Monitoring 3: Access to Legal Guarantees and Procedural Safeguards

2.4.1. Information and language

Basic information regarding the services available at a facility, and how to access them, as well as information on one's immigration process is crucial for people's perception that they are being treated fairly. However, access to such information was neither universal, nor uniform. Some facilities carried out an initial orientation, while others did not. Some facilities provided written brochures, as well as CBSA information packages, whereas others did not. Often people relied on the information shared by other detained people, which could potentially place them in a vulnerable situation. Surprisingly, IDMP observed that many detained people were not informed about the availability of certain services, such as videocalls (discussed below).

Language barriers played an important role in impeding the flow of information. When detained people do not speak the official language(s) of the region where they are detained, facilities resort to different strategies to communicate with them. All facilities rely on additional languages spoken by their staff members, and some also use translations applications. IHCs, as well as some PCFs, have access to professional interpreters by telephone, although these resources were not consistently used. CRCS notes a positive practice where one facility automatically scheduled appointments with Legal Aid services for people who did not speak an official language, aiming to mitigate communication issues that might otherwise have delayed access to Legal Aid. Nonetheless, difficulties in conferring basic information with facility staff due to language barriers were reported in roughly half the monitoring activities. It is possible these issues were even more widespread than IDMP was able to observe or ascertain, as in most remaining visits all detained people present at the time could communicate in one or both official languages. Obstacles linked to language led to difficulties in accessing basic services, as requests were often not understood, or the detained person was unaware of the availability of certain services. Additionally, these language barriers have also led to isolation and instances of miscommunication, as a message repeated or loudly expressed by a detained person could be misinterpreted as anger or aggression by other detained persons or staff, thus leading to frustration or aggressive behavior and, in some cases, violence.

2.4.2. Detention hearings

Lack of privacy during detention hearings in intake isolation at some PCFs was previously reported in the two (2) National Annual Reports. Similarly, during the period under review, in six (6) monitoring visits to PCFs, when individuals were in COVID-related isolation, it was reported that detention hearings were carried out by telephone in the person's cell or in the range, where other detained people or PCF staff could overhear the information shared. No such issues were reported during intake isolation at IHCs. Outside of COVID-19 related isolation, there were no problems reported regarding the lack of confidentiality for hearings either at PCFs or IHCs. However, confidentiality of communication with one's lawyer is not ensured at many facilities. IDMP observed that calls to lawyers were often made from the common area in the unit, where other detained people could overhear the conversation. Also, IDMP witnessed that in-person conversations in visiting areas at some facilities could be overheard outside professional visitation booths.

During the pandemic, some facilities encountered problems during their transition to remote detention review hearings, resulting in observed delays. In the period under review, delays in detention hearings were only reported during one visit. It was not possible to determine the cause of the delays, and they could have been beyond the detention facility's control.



2.4.3. Issues undermining due process

The basic fairness of the administrative process surrounding immigration detention is essential and should be upheld in substance and in appearance. During the monitoring period, IDMP observed different problems undermining the equity of this process and proper procedural safeguards not being in place, unjustly hindering the detained person's capacity to challenge their detention. For instance:

1. Government funded Legal Aid programs were not available to people detained for immigration reasons in two (2) provinces monitored by IDMP; NGOs were able to provide support to a limited number of people, due to resource constraints. Thus, some people held under IRPA in those provinces did not have legal representation.
2. As mentioned above, lack of time out of cell hindered the ability of people detained in many PCFs to access the phone to contact their lawyer. Time out of cell was particularly limited during intake isolation, when detained people needed to contact Legal Aid. Often, they were not able to get legal representation in time for their 48-hour detention review. It is to be noted that Legal Aid services in some regions resorted to representation by duty counsel in their first hearings to mitigate the problem.
3. In some instances, during the monitoring period, people detained for immigration reasons stated it was difficult to follow detention hearings conducted over the phone, and that they weren't sure who was intervening during the proceeding. For example, people who did not speak an official language and being supported by an interpreter often mentioned being confused in these audio hearings. At times, it led to a perception of the process as being unfair.
4. For people not speaking an official language, it was difficult – and often impossible – to understand documents provided by the government, such as IRCC documents or detention hearings transcripts. As mentioned above, contact with their lawyers who could help with translation was often difficult. Moreover, depending on the language they spoke, some could be supported by facility staff or other detained people, but interpretation services were not available, neither was access to internet, which could provide access to translation applications. Finally, there were instances where people detained who spoke one official language received transcripts in the other official language without further explanation. Also, even though the hearing was conducted in their language, the transcript was in the other official language.
5. In five (5) provinces where monitoring activities took place, people detained in PCFs must wear a prison uniform, which is usually an orange jumpsuit. When detention hearings were done by videoconference, detained people were not offered to change to civilian clothes, which conveyed the impression that individuals held under IRPA were detained for criminal matters, when it was not the case. Of note, senior staff at some PCFs indicated it would be theoretically possible for people detained under IRPA to be offered the opportunity to change into civilian clothes, however it was not reported to have been done in practice. In one (1) province, detained people were transferred from the PCF where they were held to a CBSA office to carry out the detention review hearing. In addition to the prison uniform, some detained individuals mentioned having to wear restraints during the video-hearing, unjustly giving the idea the detained person is particularly dangerous.
6. One detained person described participating in a hearing during intake isolation through the door hatch, with a correctional officer holding the phone – similar situations had been reported during the two (2) previous monitoring periods. Beyond the issue with confidentiality of information, the detained person had to squat to listen, which is an uncomfortable position, is not conducive to a full participation to one's hearing and does not permit a person to properly argue for their release.
7. Interprovincial transfers – in some cases compulsory – had an impact on detained people's administrative process. For instance, sometimes detained individuals had to change lawyers. CBSA tried to mitigate this issue by transferring people before their first hearings, or arranging temporary transfers where individuals were transferred back before their next hearing. A situation was observed where ATDs were deemed possible by CBSA in one province but not in another where the detained individual was transferred to, leading to the conclusion that there may be a gap in regional consistency in such matters.

Although IDMP understands many of the above-mentioned issues arose from authorities attempting to address practical problems with limited options at their disposal, the consequences for the detained people were nonetheless important. These situations eroded the general perception of fairness within the overall system.



2.5. Area of Monitoring 4: Ability to Maintain Contact with Family and Friends

Phone calls remain the main source of communication with the outside world for detained people. Telephones were easily accessible at the three (3) IHCs. However, at many of the monitored PCFs, the situation was different. At the nine (9) monitored PCFs where detained people could be confined to their cell for 22 hours a day or more, there was a lack of physical access to the telephone, which were located in the common area. Moreover, the family members, friends, or lawyers whom they wanted to call may not have been available during the short period where the detained person was outside their cell. Triple-bunking meant more people in a unit wanting to use a limited number of telephones. Additionally, in certain facilities, some of the telephones were informally reserved for influential people within the unit. This limitation reduced the possibility for others to make calls. Finally, setting up a phone account and transferring money into it, at certain PCFs, could take up to one (1) week during which time calls are not possible except for an initial call. Another major and longstanding obstacle to contacting family by telephone has been the cost of international calls. In over half of the monitoring activities, it was mentioned as a significant challenge faced by detained people. IDMP notes that, during certain visits, no one had family abroad whom they needed to contact, meaning the prevalence of this issue could be higher than observed. IDMP does note that CBSA and some facilities have made important efforts to mitigate the problem. Some PCFs offered free calls, one (1) IHC received calls from a PCFs in the region and connected them internationally – at no cost to the detained person. And, in some regions, DLOs and other CBSA officers supported people detained under IRPA with calls or calling cards. Nonetheless, the need to make international calls continued to be expressed by detained individuals and some mentioned never having been able to talk with relatives abroad.

During the pandemic, many facilities implemented video calls. By the end of the monitoring period, they were possible at two (2) of the three (3) IHCs and at half of the monitored PCFs¹. While these types of calls offer several advantages, including being free regardless of the location called to, some problems were observed. For instance – as mentioned above – a high percentage of people detained in facilities offering videocalls were not aware that this type of communication option was available.

By the end of the monitoring period, in-person family visits were once again offered at all three (3) IHCs, one (1) of them permitted regular contact visits, while the other two (2) could accommodate them on a case-by-case basis. Visits were also possible at three quarters of the visited PCFs. The vast majority of PCFs only permitted non-contact visits where people were separated by glass – a very limited number of them permitted contact visits, mainly for mothers seeing their children. At two (2) facilities, in-person visits are done through video, with the detained person remaining in the unit and the family traveling to the location of the video-booths. However, given the circumstances, IDMP does not consider these to be traditional visits per se, but rather video calls. Regarding in-person visits, the distance of some facilities to major urban centers was an important obstacle for some families – four (4) monitored facilities were more than a one (1) hour drive from the closest major city center and not accessible through public transit.

2.6. Recommendations on Procedural Safeguards and Family Contacts

The CRCS recommends that all information pertaining to facility rules and regulations as well as CBSA information packages be consistently provided by facility personnel and/or CBSA at all facilities where people detained under IRPA are held. Furthermore, CBSA should monitor whether people detained for immigration reasons have access to this information.

The CRCS strongly urges the use of professional interpretation services during key moments of detention, including facility orientations, during medical or mental health consultations, or any other interaction of a confidential or decisive nature at all facilities where people detained under IRPA are held. Unit staff at PCFs should have access to interpretation services, such as those available by phone, to facilitate day-to-day communication with people detained under the IRPA.

Noting people detained under IRPA in two (2) of the monitored provinces do not have access to government funded Legal Aid services – which is not in line with “Equality Rights” principle²– the CRCS recommends individuals held in those provinces be offered, as a priority, a voluntary transfer to an IHC in a region where Legal Aid services are available to people held under IRPA.

Appearing in civilian clothes and free of restraint in front of the IRB (or any judicial authority) is in the interest of due process and of guaranteeing the fundamental fairness of the hearing. The CRCS highlights that, as mentioned in the UN Standard Minimum Rules for the Treatment of Prisoners, if restraints are needed during transport, they must be removed when the detained person appears before a judicial or administrative authority³, which should extend to video hearings. Any exception should be based on an individual assessment

¹ Excluding 2 facilities which had closed circuit video calls between the unit where people were detained and a specific location where family must travel to.

² The Canadian Charter of Rights and Freedoms <https://www.justice.gc.ca/eng/csjs-sjc/rfc-dlc/ccrf-ccd/pdf/charter-poster.pdf>.

³ SMR 47.

CANADIAN RED CROSS
Immigration Detention Monitoring Program (IDMP)
Annual Report
Monitoring Period – April 2022 to March 2023



of the risk posed by the person, be legal, necessary, and proportional¹, and be decided in consultation with the IRB. Also, reminding that people detained for administrative reasons should always be allowed to wear their own clothes, or other adequate clothing, the CRCS highlights that, in the interest of fairness, it is particularly important to be allowed to do so when appearing in front of an IRB member².

Acknowledging reports published by the IRB on related issues, the CRCS recommends CBSA – if required, jointly with another relevant authority – gathers and shares statistics on the outcome of IRB hearings (continued detention or release) compared in different formats – in-person, videoconference, and telephone – over a certain period of time, with the goal of further understanding how different formats impact the outcome of a hearing.

The CRCS recommends CBSA makes it a requirement to offer all detained individuals free calls to family in whatever country they may be in, taking into account time zone differences, and supporting access to cellphones to retrieve numbers. This should be done shortly after being detained, after each change of facility and prior to removal. For those with limited means, additional free calls should be regularly offered.

To complement efforts to maintain family contact for people held at IHCs and uphold procedural fairness, the CRCS recommends that CBSA offers access to internet (with restrictions on content as necessary), including to applications that can translate photographed or scanned documents. CBSA should also provide detained people with non-smartphone devices³ that would be returned to the agency on release. The CRCS also highlights positive practices observed at certain PCFs facilitating contact with friends and family, which included access to electronic tablets to exchange text messages and pictures, and recommends IHCs consider implementing a similar practice.

The CRCS encourages CBSA to implement personal video calls in all IHCs and to facilitate such calls for people detained in PCFs – including providing the service off-site if necessary.

When the public health situation permits it, the CRCS recommends that all people detained under IRPA have access to contact visits. If not available at the detention facility where they are held, CBSA should explore offering them offsite – for example at the location of detention hearings when conducted outside the detention facility or at the airport before removal.

Maintaining that people detained for immigration reasons should always be able to wear their own clothes, or other adequate clothing, the IDMP highlights it would be particularly important to offer a change to civilian clothes to people detained in PCFs (where they must wear uniforms) before in-person visits and personal video calls. Also, CRCS recommends softening the backdrop of videocalls to make it look less institutional. These recommendations are especially important when a parent is speaking with their child(ren).

¹ BPP 36(2); PBPPDLA XXIII(2); SMR 47 and 48.

² SMR 19(3).

³ Devices offering basic features such as calling, texting, etc. and lacking the advanced capabilities of a smartphone, such as wi-fi, the ability to install and run applications, etc.



3. People in Vulnerable Situations and People Detained for Longer Periods

Responding to the needs of people in vulnerable situations is at the core of the Red Cross and Red Crescent Movement's mandate. All individuals placed in detention face some level of vulnerability since they depend on the detaining authority to respond to their basic needs. The CRCS believes that the detention of people in vulnerable situations¹ should be avoided since it can have serious negative effects on their physical and mental health². Moreover, in all cases of detention for immigration reasons, the length of detention should be limited in time and the decision to detain should be re-evaluated regularly. Considerations should include the necessity, reasonableness, and proportionality of detention, and consider the cumulative negative effect on the individual's wellbeing and, when applicable, the best interests of directly impacted children.

3.1. Observations: People in Vulnerable Situations and Conditions of Detention

People in vulnerable situations were observed in over half of the monitoring activities conducted during the monitoring period. Of these, people diagnosed with mental health issues or self identifying as suffering from them were the majority – for example, substance use disorder was often mentioned, as well as schizophrenia and depression. Some facility managers confirmed an increase in people suffering from mental health conditions, including substance abuse, and spoke of high numbers of people having a history of homelessness. Moreover, some people met by IDMP shared that they had serious physical health issues, were asylum seekers, or belonging to the LGBTQIA2S+ community. IDMP was made aware of a pregnant person detained under IRPA placed in a PCF and also met people who stated they were over 60 years of age at two (2) IHCs. Finally, IDMP encountered an individual with a physical disability at an IHC. IDMP acknowledges detention of people in the vulnerable circumstances described above is not prohibited per se in the legal framework; however, it reiterates that detention must be proportionate, i.e. the harm prevented must outweigh the damage caused to the person; and necessary, i.e. that there is no other less restrictive means available which could have reached the same objective.

IDMP observed the presence of children at two (2) IHCs – both unaccompanied and accompanied by their parents – which is not in line with international standards. IDMP reiterates that places of detention cannot respond to the developmental needs of a child. Moreover, as was reported by the management at one (1) IHC, educational services were not available due to a province-wide shortage of teachers. Also, IDMP met with detained people who mentioned being separated from their family upon entering the country together – with one parent and the child(ren) being granted ATDs, while the other parent was detained. Recognizing the complexity of the issue, and the lack of sufficient data to conduct a systemic analysis, IDMP notes nonetheless that in some cases, the detained parents in the above situations reported being detained for grounds other than danger to the public.

Some people detained under IRPA interviewed by IDMP reported being placed in a special regime called "suicide watch" when they expressed an intention to harm themselves. At the monitored PCFs, these regimes were highly restrictive, providing little time outside the cell and few opportunities for meaningful contact. It was reported that detained individuals were isolated in a cell, wearing tearproof garments, closely monitored by correctional officers in person and/or via camera and visited by medical staff. However, many of those interviewed by IDMP mentioned not receiving mental health care while placed on suicide watch. Although this was not the intended purpose of these regimes, they were perceived as punitive and sometimes could have created conditions of solitary confinement. Suicide prevention measures were also in effect at IHCs, but they were described as being less restrictive and more flexible, although they also separated detained people from their peers.

IDMP was notified of a death in detention at the BC IHC in December 2022 and responded with a monitoring visit to the facility according to its mandate as set in the Contract between the CRCS and the CBSA. The IDMP response included interviews with detained people present at the time of the event and discussions with the authorities on the measures taken in response to the event, including confirming with the authorities that the family had been notified, and that detained people had access to various supports, including to mental health care.

¹ Individuals who are in a vulnerable situation of immigration detention include: children and families with children, pregnant individuals, those at risk of violence due to their gender, sexual orientation or gender identity, individuals requiring physical and mental health support, people with disabilities, the elderly, stateless people and those with special protection needs, such as refugee claimants, victims of trafficking, and survivors of torture or trauma. This definition is in line with the definition of persons in vulnerable situations in the Immigration and Refugee Board of Canada's Chairperson Guideline 8: Procedures with Respect to Vulnerable Persons Appearing Before the IRB (Guideline issued by the Chairperson pursuant to paragraph 159(1)(h) of the Immigration and Refugee Protection Act).

² GCR III 59-60; CGM 23, 29 (a) and (h); SMR Rule 2(2), 109 (2); UNHCR-DG 4, 9; BR Rule 2, 65; CRC 3, 9, 37(b), (d); RPJDL 2, 28, 29. See also UN General Assembly, Report of the Special Rapporteur on the human rights of migrants, François Crépeau, 2 April 2012, §43-46, A/HRC/20/24, available at: <https://www.refworld.org/docid/502e0bb62.html>.



3.2. Observations: People Detained for Longer Periods and Conditions of Detention

As observed during the previous monitoring periods, IDMP met people who had been detained for more than three (3) months in over a third of the visited facilities. The CRCS does not determine what constitutes long-term detention, as the negative impact of detention varies depending on the circumstances of the individual. Noting that there is no maximum limit in Canadian law for immigration detention, and noting there is a procedure in place for regular detention reviews, IDMP nevertheless emphasizes the importance that in every case, the negative effects of prolonged detention be properly considered, and that they must be consistently proportionate to the risk the detaining authorities seeks to mitigate; and that other less restrictive means, such as ATDs, are explored. These questions become even more crucial in cases involving people with mental health conditions, whom IDMP had observed being detained for long periods.

3.3. Recommendations

The CRCS encourages the CBSA to further expand the availability of ATDs in all regions to be able to offer them to a greater number of individuals in vulnerable situations. Moreover, it is recommended to offer ATDs adapted to a greater diversity of people with specialized needs, such as those offered by organizations with expertise in providing trauma-informed medical and mental health care. Such an investment will allow detaining authorities to safeguard the wellbeing of eligible individuals. The CRCS recommends developing the capacity to offer ATDs adapted for individuals whose detention is long-term and individuals with specific physical and mental health needs, including those requiring continued care after detention.

The CRCS considers the use of PCFs to hold people in immigration detention, especially those in the most vulnerable situations, to be problematic and that it should be avoided. In addition to the findings outlined above, the CRCS also notes that the resources required to identify and perform ongoing evaluations of the unique needs of people in vulnerable situations were limited in the visited PCFs, including fewer opportunities for interaction with CBSA officers. Moreover, the PCFs monitored by the CRCS offer limited care and support to people detained under the IRPA who have specialized needs, such as individuals with prior trauma or those requiring mental health support.

The presence of children in immigration detention settings is prohibited by international and national standards such as those included in the Convention on the Rights of the Child, which prioritizes the best interests of the child in decision-making. The Global Compact for Safe, Orderly, and Regular Migration¹, which the Government of Canada has also expressed support for, calls for working towards ending the practice. The United Nations Global Study on Children Deprived of Liberty “recognizes that migration-related detention of children cannot be considered as a measure of last resort and is never in the best interests of the child and, therefore, should always be prohibited (...). Detaining children to “keep families together” or for their “protection”, where alternative care is lacking, can never be a justification². Considering the above, the CRCS strongly recommends CBSA ends the practice of placing children in detention facilities – whether detained or accompanying a parent or legal guardian. For cases where liberty is not possible, the CRCS recommends developing ATDs to permit family unity outside detention since, in a vast majority of cases, it is in the best interest of the child.

The CRCS has observed situations where parents arrive in the country with one or more children, and one parent is detained while the other obtains ATDs with the child(ren) – thus separating the family. Conscious of the fact that circumstances around family separation vary, and that the reasons to detain are different, the CRCS recommends CBSA gathers and shares statistics on the phenomenon, including the reason for detention, to better understand the situation.

Given the high prevalence of mental health conditions in detention, and that stays in detention can be long, the CRCS recommends taking strong preventative action. Suicide-resistant architecture and design as well as environmental safeguards are important but not sufficient. All persons detained should receive initial and ongoing mental health screening to identify those at risk of suicide. The CRCS also highlights that serious mental health conditions, including a high risk of suicide, should be considered as a strong argument for release, or for offering ATDs with proper mental health care. For those with mental health needs remaining in detention – including identified risk of suicide – mental health support is essential, and other preventative measures must be legal, necessary and proportionate, as well as avoid as much as possible resorting to isolation. Finally, the CRCS highlights that suicide prevention measures must not impede “regular life” for those not deemed at risk of suicide.

Given the changes in the population being detained at the IHCs, the CRCS recommends exploring the addition of addiction therapy, such as planned at TIHC, and other similar projects - at all the IHCs.

¹ “Working to end the practice of child detention in the context of international migration” - GCM 29(h).

² Report of the Independent Expert leading the United Nations global study on children deprived of liberty, paragraph 56, 11 July 2019, available at <https://digitallibrary.un.org/record/3813850> [accessed 21 September 2020].

CANADIAN RED CROSS
Immigration Detention Monitoring Program (IDMP)
Annual Report
Monitoring Period – April 2022 to March 2023



Finally, as mentioned above, the CRCS highlights that some health-care services that are covered by the IFHP and its supplemental coverage are not available at certain PCFs, such as the services of a psychiatrist or a psychologist, and that some people in immigration detention are not receiving needed health care as a result. These and other services are important for all people detained under IRPA who may need them. For example, therapy can enable a person to prevent the behaviors that initially led to a determination of “danger to the public”, allowing for an alternative solution in situations of prolonged detention¹.

¹ See *Ali v Canada (AG)*, 2017 ONSC 2660, 137 O.R. (3d) 498, para 37, <https://www.canlii.org/en/on/onsc/doc/2017/2017onsc2660/2017onsc2660.html>



4. Short-Term Detention

Since the last monitoring period, IDMP has also been visiting detention facilities for short term stays, such as Ports of Entry (PoE) – airports or land border crossing offices – and inland offices. Assessment of the conditions at these facilities considers that detention should not exceed 48 hours, and therefore services offered are more limited than what is found in a facility for longer-term detention. To complement and triangulate those findings, IDMP also gathered information from people at IHCs and PCFs who had previously gone through short-term detention facilities.

4.1. Observations

PoE and inland offices visited by IDMP

At all 11 locations used for short-term detention visited by IDMP, stays were reported not to exceed 12 hours, and in some cases, it was only a few hours. In five (5) of seven (7) visited PoEs, the option to detain a person on a bench in a waiting area without restraints (bench detention) instead of placing them in a holding cell was possible, depending on the assessed level of risk. One (1) facility had an interior courtyard accessible to people detained and held in an open waiting area. Detention in a waiting area was only possible at one (1) of the four (4) visited inland offices – which may be related to the layout of these offices and the population they typically receive. Among the eleven (11) facilities, six (6) had large rooms, providing placement options that are less restrictive than individual cells – one (1) facility only had large rooms, the other five (5) had a combination of a large room and individual cells.

Natural light was visible in cells or holding rooms at only two (2) of the eleven (11) locations. Some of the visited cells had a rougher, more institutional design, with concrete walls and beds made of concrete or metal, along with a metal toilet and sink. Others had softer features, such as wooden benches or drywall, and some of the cells were painted in colors which softened the environment. A cell at one (1) inland office was located on the 4th floor of a building and detained people had to go through public areas with restraints – thus affecting the dignity of people held there. At one location, IDMP identified a potential privacy issue since there was nothing to block the camera monitoring the toilet area.

Food and water were reportedly provided at all the monitored locations. Mattresses were not available at any visited PoE, which was a particular concern at airports since people could spend the night in a cell. Mattresses were available in one (1) of the four (4) inland offices, but it is less concerning since those offices are not open overnight and therefore no one would spend the night in those facilities. Blankets were available at all the PoE, and pillows were provided in five (5) of them. Three (3) of the four (4) inland offices offered blankets and two (2) of them offered pillows.

Access to a person's belongings depended on the location and the type of placement (cell/holding room or bench detention). Some locations permitted regular access to belongings in all cases, while others only allowed it during bench detention and access was more complicated or not possible when someone was placed in a cell.

Following conversations with CBSA facility managers, it is IDMP's understanding that there is no clear national policy on the placement of children in short-term detention cells. At seven (7) facilities, IDMP was informed that detention of children would not be done; while at the other four (4) it wasn't clear. At three (3) facilities, it was said it had not been done, but it was not indicated that it was prohibited as such, and at the last facility, managers said children could be placed in a holding area, but attempts would be made to avoid it, and children would be placed with their parents in a larger room and not an individual cell.

Language interpretation, usually done over the telephone, was reported to be available at all facilities. Calls to lawyers, Legal Aid contact information, as well as the ability to make calls to consular authorities were reported to be offered at all the monitored locations. Finally, managers of the visited short-term detention locations reported offering calls to family, with few exceptions.

4.2. Recommendations

When the risk assessment permits it, short-term detention should be carried out in open spaces such as waiting areas without restraints being applied (bench detention); such a practice offers an additional option to better adapt the level of restrictions to the risk posed by the person.

While positive practices were observed in short-term detention facilities – such as very short stays – CRCS notes that most cell designs leave room for improvement. Although the size of cells may be adequate for short-term single occupancy, CRCS recommends that new

CANADIAN RED CROSS
Immigration Detention Monitoring Program (IDMP)
Annual Report
Monitoring Period – April 2022 to March 2023



cells – or present ones in the case of renovations – include features such as windows that provide natural light and allow people being detained to see outside. The choice of colours and materials should not be made on security grounds alone, with options being considered that calm, provide wellness, and create a more personal environment that echoes life outside detention¹. Should detention be longer than a few hours, a mattress should be made available – especially at airports where overnight stays are more frequent.

Understanding there could be security issues while someone is in their cells and exceptions may be necessary, IDMP recommends the use of a clear policy permitting access to one’s cellphone and other personal items (under supervision if needed) while staying in places of short-term detention. IDMP notes good practices were observed in certain locations where people in bench detention could access their cellphones and other belongings and people in cells could take in certain articles such as books.

Given no clear policy on the placement of children when held in locations for short-term detention was identified, and until placement of children in facilities used for immigration detention is barred, IDMP recommends developing a policy clearly prohibiting placing children in cells in short-term facilities, while maintaining family unity and resorting to placement in open spaces without restraints.

¹ See “Extract from the 2nd General Report of the CPT, published in 1992 – Police Custody”, European Committee for the Prevention of Torture and Inhumane or Degrading Treatment or Punishment (CPT), CPT/Inf (92)3-part1, paragraph 42 and 43. And “Dignity and Safety in Restrictive Detention Regimes”, International Committee of the Red Cross (ICRC), 2018, p.16-17 (<https://shop.icrc.org/dignity-and-safety-in-restrictive-detention-regimes-pdf-en.html>).



Conclusion

CRCS detention monitoring is carried out by the IDMP in accordance with the Contract between the CRCS and the CBSA, encompassing the period from February 23, 2021, to February 22, 2024, inclusive. This report presents the observations and recommendations of the CRCS on immigration detention following a total of sixty-two (62) monitoring activities, including fifty-three (53) planned visits, three (3) discretionary visits and six (6) unanticipated visits in response to a notification. The CRCS performed seventeen (17) monitoring activities to IHCs, thirty-four (34) monitoring activities to PCFs, and eleven (11) monitoring activities to short-term detention facilities. These activities were conducted at three (3) IHCs, sixteen (16) PCFs, and eleven (11) short-term detention facilities holding persons detained under the IRPA between April 2022 and March 2023.

The findings and the recommendations made in this report are focused on enhancing the conditions of detention for people detained for immigration and grouped in the following themes:

- Immigration holding centres and provincial correctional facilities;
- People in vulnerable situations and people detained for longer periods; and
- Short-term detention facilities.

Based on observations, the CRCS makes the following main recommendations to the CBSA:

- Maintain acceptable detention conditions while responding to public health emergencies;
- Provide all three (3) IHCs with infrastructure, personnel and procedures that permit holding people with complex profiles;
- Organize an orderly transition to a system that does not rely on co-mingling people detained for immigration reasons with people held under the Criminal Code;
- Expand the availability of specialized ATDs to respond to a larger variety of detained peoples' needs;
- Establish the position of specialized detention agents responsible for overseeing people with higher levels of risk detained at IHCs;
- Ensure people detained under IRPA have access to leisure, cultural, and educational activities;
- Maintain regular and adequate access to areas outside the cell for individuals detained under IRPA;
- Provide full and timely access to health services covered by the IFHP;
- Review the policy on the use of restraints and strictly monitor their application;
- Ensure and monitor access to CBSA info packages and other important materials;
- Provide professional interpretation services for key moments of detention and, ideally, for day-to day communication;
- Offer a voluntary transfer to an IHC for those who do not have access to government funded Legal Aid services;
- Allow individuals detained under IRPA to appear in civilian clothes and free of restraints in front of the authority deciding on their detention;
- Explore how various formats of Immigration and Refugee Board of Canada (IRB) hearings (in-person, videoconference, telephone) influence the results of a hearing;
- Provide free local and international calls to contact family;
- Offer restricted internet access along with translation applications and electronic tablets for the purpose of exchanging text messages and images;
- Allow contact visits at all detention locations, when the public health situation permits;
- Highlighting that no one detained under IRPA should be in a PCF, avoid holding people in vulnerable situations in those facilities;
- Receive initial and ongoing mental health screening to help identify those at risk of suicide;
- End the practice of placing children in facilities used for immigration detention, and develop ATDs to permit family unity outside of detention when liberty is not possible;
- As often as possible, carry out short term detention in open space without restraints;
- Improve short term detention cell design when planning renovations or building new facilities;
- Establish a clear policy permitting access to personal phones in short term detention (under supervision if needed).

The CRCS remains available to discuss the findings made in this report with the CBSA and offer objective feedback and guidance.



ANNEX: Relevant Standards

ATP	United Nations (UN) Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the UN Convention against Transnational Organized Crime (Anti-Trafficking Protocol) (2000)
ACHR AP	Organization of American States (OAS) American Convention on Human Rights Additional Protocol in the area of Economic, Social and Cultural Rights (1988)
BPP	UN Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment (1988)
BR	UN Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the “Bangkok Rules”) (2010)
CCRF	Canadian Charter of Rights and Freedoms (1982)
CMW	UN Convention for the Protection of the Rights of All Migrant Workers and Members of their Families (1990)
CRC	UN Convention on the Rights of the Child (1989)
EC	European Committee, Statement of Principles Relating to the Treatment of Persons Deprived of their Liberty in the Context of the Coronavirus Disease (COVID-19) Pandemic (2020)
GCM	Global Compact for Safe, Orderly, and Regular Migration (2018)
GCR	Report of the United Nations High Commissioner for Refugees, Part II: Global Compact on Refugees (2018)
ICCPR	UN International Covenant on Civil and Political Rights (1966)
ICRC	International Committee of the Red Cross on the Protection of Migrants in Light of the COVID-19 Pandemic
IASC	Guidance on COVID-19: Focus on Persons Deprived of Their Liberty (2020)
PBPPDLA	OAS/Inter-American Commission on Human Rights (IACHR) Principles and Best Practices on the Protection of Persons Deprived of Liberty in the Americas (2008)
RPJDL	UN Rules for the Protection of Juveniles Deprived of their Liberty (1990)
SMR	UN General Assembly, UN Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules): Resolution adopted by the General Assembly, 8 January 2016, A/RES/70/175
UN	United Nations Working Group on Alternatives to Immigration Detention, COVID-19 & Immigration Detention: What Can Governments and Other Stakeholders Do?
UNHCR-DG	UNHCR Guidelines on the Applicable Criteria and Standards Relating to the Detention of Asylum-Seekers and Alternatives to Detention (2012)
VCCR	Vienna Convention on Consular Relations (1963), Article 36