



**CANADIAN RED CROSS SOCIETY
ANNUAL REPORT ON
DETENTION MONITORING ACTIVITIES
IN CANADA**

2013-2014

CONFIDENTIAL



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List of Abbreviations

ACCW	Alouette Correctional Centre for Women
BC IHC	British Columbia Immigration Holding Centre
BYCSC	Burnaby Youth Custody Services Centre
CBSA	Canada Border Services Agency
CSI	Centre de Surveillance de l'Immigration
CR	Child Representative
CRC	Calgary Remand Centre
CRCS	Canadian Red Cross Society
DFN	Designated Foreign National
DMP	Detention Monitoring Program
DR	Designated Representatives
FRCC	Fraser Regional Correctional Centre
HCC	Headingley Correctional Centre
ICCPR	International Covenant on Civil and Political Rights
ICRC	International Committee of the Red Cross
IHC	Immigration Holding Centre
IRB	Immigration and Refugee Board
IRPA	Immigration and Refugee Protection Act
IRPR	Immigration and Refugee Protection Regulations
MCFD	Ministry of Child and Family Development (BC)
MoU	Memorandum of Understanding
ERC	Edmonton Remand Centre
NFPC	North Fraser Pre-trial Centre



NGO	Non Government Organization
NS DoJ	Nova Scotia Department of Justice
NSMP	National Standards and Monitoring Plan for the Regulation & Operation of CBSA Detention Centre
OMD	Offenders with Mental Disorders
PCF	Provincial Corrections Facility
PRIES	Pacific Region Inland Enforcement Section
RDP	Centre de détention de Rivière-des-Prairies
RFL	Restoring Family Links
TBP	Toronto Bail Program
TIHC	Toronto Immigration Holding Centre
TRAC	Toronto Refugee Affairs Council
UNCRC	United Nations Convention on the Rights of the Child
UNHCR	United Nations High Commissioner for Refugees
WHO	World Health Organization
WRC	Winnipeg Remand Centre



1. Introduction

The Canadian Red Cross Society, thereafter Red Cross, is a neutral, independent humanitarian organization committed to and driven by its Fundamental Principles of humanity, neutrality, independence, impartiality, voluntary service, unity, universality. The mission of the Red Cross is to improve the lives of vulnerable¹ people by mobilizing the power of humanity in Canada and around the world.

The Red Cross Detention Monitoring Program (DMP) was established in 1999 in response to the influx of Chinese migrants on Canada's Pacific coast and their subsequent detention. At that time, the Canadian government requested that the Red Cross monitor the treatment and conditions of their detention. Following that, the program evolved to include the monitoring of other immigration detention facilities.

An agreement to monitor immigration detention conditions was first established between the Red Cross and Citizenship and Immigration Canada (CIC) in 2002. On the 3rd November 2006, the Red Cross entered into a Memorandum of Understanding (MoU) with the Canada Border Services Agency (CBSA), to reflect the transfer of the enforcement of the IRPA from the CIC to the CBSA. The MoU mandates the Red Cross to monitor the conditions of persons detained under the Immigration and Refugee Protection Act (IRPA). Article 3.1 of the MoU provides that the Red Cross "...will monitor compliance with all applicable domestic standards and international instruments to which Canada is a signatory".

In accordance with articles 4.2 and 4.3 of the MoU, the Red Cross is hereby submitting the 2013-2014 Annual Report in detention monitoring activities. This report summarizes the Red Cross' detention monitoring activities, identifies discrepancies between the CBSA's detention practices, domestic and international standards and provides recommendations where appropriate to the Vice-President, Programs and the Vice-President, Operations, of the CBSA.

¹ *Canadian Red Cross Society Vulnerable Clients Policy 2005* at 1. The Canadian Red Cross defines vulnerable people as those at greatest risk from situations that threaten their survival and safety, their security and well being, and their human dignity; mainly those with the least resources or capacities to assist themselves. Children and youth (under the age of majority), seniors and persons with disabilities are all considered vulnerable clients. Clients of temporary or permanent reduced capacity are also considered vulnerable clients under this policy. In addition, the Red Cross conforms to the IRB's definition of vulnerable, *Chairperson's 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 (as amended 15 December, 2012).



1.1 The Canadian Red Cross Detention Monitoring Program

The DMP provides independent monitoring of detention facilities. The aim of the program is to promote a protective environment where the rights of immigration detainees as set out in international and domestic standards are recognised and in which detainees are treated with dignity and respect.

This work is carried out in accordance with the MoU between the CBSA and the Red Cross and supported by the *Canadian Red Cross Detention Monitoring Guidelines* (hereinafter the DMP Guidelines). These guidelines include national minimum service delivery standards.

Pursuant to the MoU, the Red Cross monitoring work focuses on four areas:

- the conditions of detention, including but not limited to, access to food, medical services, access to recreation/outdoors, access to information;
- the treatment of detainees by facility staff, contractors and other detainees, as well as complaint mechanisms;
- the legal guarantees of detainees including access to counsel; and
- Detainee's ability to contact and maintain contact with family.

Where the Red Cross observes other issues pertaining to the immigration detainee population, it may pursue further dialogue with the authorities regarding those issues or refer them to other relevant institutions, while maintaining appropriate confidentiality protocols.

The aforementioned four core monitoring areas are measured against, in accordance with section three of the MoU, "all applicable domestic standards and international instruments to which Canada is signatory". These include but are not limited to the following (either whole or in part):

- *Canadian Charter of Rights and Freedoms*²
- *Immigration and Refugee Protection Act*³
- CBSA National Standards & Monitoring Plan for the Regulation and Operation of CBSA Detention Centres
- *UN Convention on the Rights of the Child*⁴

² The Constitution Act, 1982, Schedule B to the Canada Act 1982 (UK), 1982, c 11.

³ *Immigration and Refugee Protection Act*, S.C. 2001, c. 27.

⁴ UN General Assembly, *Convention on the Rights of the Child*, 20 November 1989, United Nations, Treaty Series, vol. 1577, p. 3.



- *The 1951 Convention Relating to the Status of Refugees and its 1967 Protocol* (UN Refugee Convention)⁵
- International Covenant on Civil and Political Rights⁶
- UNHCR Detention Guidelines⁷
- UN Standard Minimum Rules for the Treatment of Prisoners⁸

The Red Cross' monitoring work generally focuses on systemic issues rather than individual cases. This involves understanding the policies, standard operating procedures and mechanisms governing the operations in a facility, including how staff are trained and how services are provided to the detainees. This approach is aimed at ensuring that system-wide recommendations benefit all current and future detainees. However, where appropriate and with the express consent of the detainees, the Red Cross will raise specific issues brought forward by detainees during interviews to the authorities.

Within the parameters of the Red Cross monitoring procedures, teams make every effort to ensure that the detained persons interviewed are as representative as possible of the different categories of detainees in the facility. While the Red Cross is concerned with the well-being of all persons detained under the IRPA, priority is placed on meeting those deemed to be the most vulnerable, including persons in segregation or medical isolation, minors, separated families, refugee claimants and long-stay detainees.

The Red Cross regularly visits the facilities which we have access to. This includes the federal Immigration Holding Centres (IHCs) in British Columbia, Toronto and Quebec, as well some provincial correctional facilities in Alberta, British Columbia and Quebec and as of April 2014, Manitoba (see section 1.3 for the list of facilities).

1.1.1 The Scope of the Red Cross Detention Monitoring Program

In accordance with the CRCS-CBSA MoU, the Red Cross' activities are limited to the monitoring of immigration detention for persons held pursuant to the IRPA. As per section 2.1.2 of the MoU, this includes monitoring the places of detention under the control of the CBSA and "other Federal, Provincial, Territorial and Municipal authorities".

⁵ UN General Assembly, *Convention Relating to the Status of Refugees*, 28 July 1951, United Nations, Treaty Series, vol. 189, p. 137.

⁶ UN General Assembly, *International Covenant on Civil and Political Rights*, 16 December 1966, United Nations, Treaty Series, vol. 999, p. 171.

⁷ UN High Commissioner for Refugees (UNHCR), *Guidelines on the Applicable Criteria and Standards relating to the Detention of Asylum-Seekers and Alternatives to Detention*, 2012.

⁸ United Nations, *Standard Minimum Rules for the Treatment of Prisoners*, 30 August 1955.



The Red Cross' has no legal authority to enforce recommendations provided to the CBSA. In addition, the Red Cross does not hold investigative powers or conduct investigations comparable to that of the Provincial and Federal Ombudsman's offices.

Instead, the Red Cross acts as an independent third party operating in accordance with principles of independence and neutrality, providing independent and unbiased reviews, and recommendations that the CBSA may consider in order to improve the environment for all persons detained under their care.

1.1.2 Confidentiality and the Red Cross Detention Monitoring Program

Confidentiality is a core principle in the Detention Monitoring Program. Immigration detainees are often in vulnerable situations as they are deprived of their liberty and their movements are closely controlled. Further, detainees may also be vulnerable for multiple reasons such as, among others, their age (for example minors and the elderly), traumatic events they experienced in their country of origin (refugee claimants and victims of torture), or pre-existing physical and mental health problems and/or illnesses⁹.

By following a strict policy of confidentiality, the Canadian Red Cross is able to gain the trust of immigration detainees. As such, Red Cross staff and volunteers will not pass on information given by a detainee to the authorities or a third party without the explicit consent of the detainee.

As per section 5.1 of the CRCS-CBSA MoU, "[s]ubject to lawful limitations, the Red Cross and the CBSA undertake to fully respect and protect the confidentiality of the information collected under th[e] memorandum and [will] not release such information to any person except if such a release is specifically authorized by law or this memorandum"¹⁰.

Legal exceptions to confidentiality do exist. Where there are reasonable suspicions of child abuse, all Red Cross personnel have a legal obligation to immediately report in accordance with provincial/territorial legislation. Additionally, where Red Cross

⁹ According to the Public Health Agency of Canada, "the phrase mental health problem can refer to any departure from a state of mental or psychological well-being, the terms illness and disorder suggest clinically recognized condition, and imply either significant distress, dysfunction, or a substantial risk of harmful or adverse outcome." Government of Canada, *The Human Face of Mental health and Mental Illness in Canada*, 2006 According to the Public health Agency of Canada, "http://www.phac-aspc.gc.ca/publicat/human-humain06/pdf/human_face_e.pdf" last retrieved February, 5, 2015.

¹⁰ Section 5 of the 2006 MoU between the Red Cross and the CBSA states that "Subject to any lawful limitations, the Red Cross and the CBSA undertake to fully respect and protect the confidentiality of the information collected under this memorandum and not to release such information to any person except if such a release if specifically authorized by law or this memorandum."



personnel have credible information that a detainee is considering harming himself/herself or others in the facility, Red Cross personnel will alert the authorities. In those situations, and where requested by law, the duty of confidentiality would be overridden by the need to keep detainees safe. At all times, the emotional and physical safety of detainees is paramount to the Red Cross.

1.1.3 The Red Cross Detention Program Monitoring Team

The DMP is implemented through the DMP team at the national and regional levels and is comprised of qualified staff members and detention monitoring volunteers¹¹. When planning for a site visit, given the inherent vulnerability of individuals detained in the facility the Red Cross will consider the gender balance of each team. This better ensures detainees' comfort to speak in confidence about their personal situation. The visiting teams are generally comprised of a Site Team Leader and volunteers who conduct general monitoring. When needed, the teams are accompanied by a health volunteer with a medical or nursing background, an interpreter, as well as volunteers trained to provide Restoring Family Links (RFL) services.

The Red Cross RFL program helps persons re-establish contact with immediate family members after separation due to war, internal conflict, or other humanitarian crises.

This enables the Red Cross to:

- Trace the whereabouts of detainee family members that are missing as a result of conflict or disaster;
- Provide a system for exchange of news between detainees and family members when all other means of communication have broken down;
- Obtain health and welfare reports on detainee loved ones who have suddenly and inexplicably fallen out of contact; and
- Obtain certificates of detention for detainees who have been prisoners of war and civilian detainees who were visited and registered by the International Committee of the Red Cross (ICRC) during their time in detention.

¹¹ Volunteers must undergo professional (reliant on at least two or three references) and criminal record checks. Candidates who are successful in the initial selection process must also submit an application for a vulnerable sector search as part of the criminal record check. Only then do candidates become DMP volunteers. Each volunteer must also successfully complete the mandatory training program. New team members are mentored in their work by seasoned monitors.



1.2 Detention Monitoring Visit - Methodology and Reporting Process

The work of the Red Cross DMP, program standards and monitoring framework are all modeled after the procedures of the ICRC. This has allowed the Red Cross to draw on global experience and best practices with regard to detention monitoring.

The Red Cross endeavours to conduct a minimum of four monitoring visits per year to each Immigration Holding Centre (IHC) and non-CBSA facilities to which the Red Cross has access. The Red Cross may choose to visit a facility less than four times per year if the detainees are being held at the facility on an infrequent basis. The MoU gives the Red Cross the option to conduct both announced and unannounced site visits. The Red Cross may also need to conduct a visit in response to the notification of the detention of a vulnerable person such as a minor or a person deemed unable in the opinion of the applicable division of the IRB, to appreciate the nature of the proceedings pursuant to section 1.6.7(2) of the IRPA (see section 1.3.1 for more information on these notifications) or in other special cases such as the detention of Designated Foreign Nationals (DFN).

In addition to monitoring visits, the Red Cross will meet with the regional and national CBSA authorities on a semi annual and quarterly basis respectively. These meetings are an opportunity to share key findings regarding detention conditions and the treatment of detainees as well as to engage in dialogue related to areas of improvement. Additionally, in some jurisdictions, the Red Cross will meet with (as of 2013) provincial corrections authorities annually.

Pursuant to section 2.1 of the MoU¹², the Red Cross may conduct announced or unannounced visits to detention facilities. In both cases visits will be conducted according to the following procedure:

- A monitoring visit begins with a meeting with the Red Cross and the facility director or his/her designate. The Red Cross team provides a short explanation of the Red Cross mandate in the facility, including an outline of how the visit will be conducted and asks for time for a discussion after the visit.
- The facility representative then provides a general update on the facility's population and conditions, including demographic information on the detainees, such as gender and nationality.

¹² Section 2.4 of the MoU states that the Red Cross will not be required to give advance notice of inspection in order to gain access to facilities; nor will the Red Cross be denied access to facilities on the basis that its visits are unannounced.



- The visiting Red Cross team will also ask specific questions to identify particularly vulnerable detained persons such as persons in isolation. Facility representatives are also asked about detention conditions, trends or any overall changes in the population and any incidents that have occurred within the facility. The Red Cross team will also use this opportunity to follow up on any items from the previous visit.
- After the briefing with the facility representative, the team will conduct a tour of the facility. Teams focus on assessing the layout of the premises as well as the facility's security measures (e.g. fences, confining walls). Teams will visit all areas in the facility including the detainees' living quarters, recreational areas, place of worship, visiting room, segregation area, kitchen and health services area. Teams will also speak to facility staff get an overview of their routines and procedures. Conducting a facility tour helps the team understand how the facilities are run, recurring challenges with providing care to detainees, and most importantly whether or not the facilities are in compliance with national and domestic standards.
- Following the facility tour, the Red Cross will then meet with detainees. The Red Cross representatives will typically present their mandate to a group of detainees, distribute a sheet that explains the Red Cross mandate in various languages and invite detainees to speak with team members if they wish. Sometimes, detainees share issues in a group setting while others may request a private interview. The Red Cross team members will take note of any issues and/or concerns raised during the interviews. In order to ensure the highest credibility of information the Red Cross takes the greatest effort in triangulating information in order to confirm veracity and validity. This requires the Red Cross to take a number of steps such as checking the reliability of the source information and when in doubt using multiple sources for the same piece of information.
- After concluding the confidential interviews with detainees, the Red Cross representatives will hold a team meeting to consolidate findings, followed by a debriefing with the facility representative.
- The objective of the debriefing with the facility representative is to: discuss observations; with prior consent of the detainee, discuss specific concerns of detainees; recommend actions and discuss follow up. The Red Cross normally concludes the visit after the debriefing.



- Internal and confidential Red Cross site visit reports are then prepared to document the activities of the visit. An analysis of this documentation is undertaken to determine if additional meetings with the appropriate authority are justified and likely to generate solutions to non-compliance issues. Issues which are beyond the mandate and/or authority of the facility and staff to address will be referred to the Red Cross detention monitoring National Manager who will determine the appropriate follow-up.

Information from the Red Cross' detention monitoring activities throughout the year forms the basis of the annual report's observations and recommendations. The main purpose of the report is to provide a summary of monitoring activities, highlight trends, and to identify discrepancies between detention practices and standards. The report also consolidates and synthesizes all the observations made by the DMP and discussions held with authorities throughout the reporting period. The report is national in scope and does not provide any personal information regarding individuals the Red Cross has engaged with during the monitoring period.

1.2.1 CBSA Notifications to the Red Cross

In addition to detention facility visits, article 2.2 of the MoU stipulates that "[f]ollowing the first detention review by the Immigration and Refugee Board (IRB), the CBSA will notify the Red Cross, either verbally or in writing, when the following occurs;

- the detention of a person under the age of 18;
- the detention of a person deemed unable, in the opinion of the applicable division of the IRB, to appreciate the nature of the proceedings pursuant to Section 167 (2) of the IRPA"

These notifications enable the Red Cross to monitor how the detention system responds to the particular vulnerabilities of minors and persons who have been deemed unable to appreciate the IRB proceedings. Given the greater concerns related to these populations, it is important for the Red Cross to understand whether authorities have taken every precaution to ensure that these individuals are not exposed to undue harm and how facilities are able to accommodate these individuals while ensuring their basic needs are met and all of their rights are respected.

This includes ensuring that protective factors are in place to mitigate any risks associated with these vulnerable populations.



1.2.1.1 The Red Cross Notification Response

When the Red Cross is notified of the detention of a minor or a person who have been deemed unable to appreciate the IRB proceedings, an assessment will be conducted to determine, amongst other things;

- The nature of the situation,
- Whether protective measures have been put in place such as the involvement of federal, provincial, territorial or municipal agencies/institutions with responsibilities for both child protection and for the care of persons the IRB has deemed unable to appreciate the proceedings,
- Whether alternatives to detention have been put in place or are being considered,
- Whether all health assessments have been carried out,
- In the case of minors, whether a best interest of the child determination has been made, and
- Whether a designated representative has been assigned.

This assessment allows the Red Cross to determine whether the situation warrants a visit to the facility or whether other forms of follow up are necessary.

1.3 Overview of Red Cross Monitoring Activity

In the 2013-2014 monitoring period, the Red Cross DMP carried out a total of 49 detention monitoring visits nationwide. These visits included regular site visits and unscheduled responses to CBSA notifications where there were particularly vulnerable persons detained such unaccompanied minors and/ or persons deemed unable to appreciate the nature of IRB's proceedings.

The following table provides a breakdown of all detention monitoring visits conducted by the Red Cross during the April 1, 2013-March 31, 2014, fiscal year.



Red Cross Detention Monitoring Visits 2013-2014

Province	Facility	Facility type	# of visits
Alberta	Calgary Remand Centre	Provincial Correctional	3
	New Edmonton Remand Centre	Provincial Correctional	4
British Columbia	Alouette Correctional Centre for Women	Provincial Correctional	3
	British Columbia Immigration Holding Centre	CBSA Immigration Holding Centre	5
	Burnaby Youth Custody Services Centre	MFCD-Provincial Facility	4
	Fraser Regional Correctional Centre	Provincial Correctional	5
	North Fraser Pre-Trial Centre	Provincial Correctional	5
	Pacific Region Inland Enforcement Section	CBSA-Holding Cells	4
	Vancouver Island Regional Correctional Centre	Provincial Correctional	1
	Vancouver City Jail	Municipal Jail	1
Ontario	Toronto Immigration Holding Centre	CBSA Immigration Holding Centre	4
Québec	Centre de Surveillance de l'Immigration	CBSA Immigration Holding Centre	5
	Centre de détention de Rivière-des-Prairies	Provincial Correctional	5
Total	All Facilities		49



2. Principles of Immigration Detention

Both national and international laws have enshrined within, the principles and parameters with which immigration detention should apply and operate. These principles are a measure to ensure detaining authorities put safeguards in place to protect individuals from arbitrary deprivation of liberty, to limit harm to individuals and to guarantee their basic right to dignity while in detention.

The decision to deprive an individual of liberty comes with the responsibility to ensure that their needs are met and their rights are respected. While there are several others, the Red Cross sees the following as fundamental principles of immigration detention based on national and international standards.

1. The detaining authority should apply a presumption against detention. All persons in Canada including migrants have a basic right to freedom and any deprivation of this freedom must be in accordance with the grounds stated in the Immigration and Refugee Protection Act¹³.
2. The detaining authority should use detention only as a measure of last resort¹⁴ and after all other less restricted options have been considered. In all circumstances where detention is pursued, detaining authorities must ensure that it is necessary, reasonable and proportionate to fulfilling the identified legal objective.¹⁵
3. The detaining authority should avoid detaining vulnerable persons such as minors and families with minors, elderly persons, refugee claimants, victims of torture, trafficked persons, pregnant women, persons requiring physical and mental health support. Alternatives to detention should be immediately sought for these individuals¹⁶.
4. The detaining authority must ensure that the detention of migrants and asylum seekers is done for the minimum time necessary and that overall the length of

¹³ 1. Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law, Article 9, ICCPR; Everyone has the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice, s. 7 *Canadian Charter of Rights and Freedoms*.

¹⁴ Everyone has the right not to be arbitrarily detained or imprisoned. See s. 9, *Canadian Charter of Rights and Freedoms*.

¹⁵ If it is determined that there are grounds for detention, the following factors shall be considered before a decision is made on detention or release: (e) the existence of alternatives to detention, *IRPA* s. 248...

¹⁶ *Chairperson's 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 (as amended 15 December, 2012).



time with which they are detained is reasonable and proportionate to what is needed to ensure compliance with legislation¹⁷.

5. The detaining authority should ensure the conditions of detention and treatment of all persons in detention meet all national and international standards¹⁸.
6. The detaining authority should not co-mingle immigration detainees with persons convicted of a crime.¹⁹
7. The detaining authority should build in procedural safeguards and also ensure that there are no barriers to these safeguards throughout the entire period a person is considered to be detained. These safeguards should include being informed of the reason of detention in a language that the individual can understand, the right to periodic review, the right to a judicial review, the right to legal counsel and independent monitoring of the detention system.²⁰
8. The detaining authority must ensure that detainees can contact and maintain contact, including physical contact or otherwise, with their families through out their detention²¹.
9. All persons in detention should have access to religious, cultural and education services²².

¹⁷ UNHCR's revised guidelines on applicable criteria and standards relating to the detention of asylum seekers, www.unhcr.org/refworld/docid/3c2b3f844.html

¹⁸ Ibid...Guideline 8, p.30-32

¹⁹ IRPA Regs., SOR/2002-227, s 248. See also United Nations, Standard Minimum Rules for the Treatment of Prisoners.

²⁰ See Section 7 and 10(b) of the Canadian Charter of Rights and Freedoms, *Dehghani v. Canada (Minister of Employment and Immigration)*; [1993] 1 SCR 1053, & CIC Operations Manual ENF-7.

²¹ Section 7, United Nations, Standard Minimum Rules for the Treatment of Prisoners.

²² Guideline 8, 2012, UNHCR Revised Detention Guidelines.



3. Alternatives to Detention

In recent years there has been extensive discussion both internationally and nationally on alternatives to detention. Alternatives to detention refer to any legislation, policy or practice that allows for asylum seekers, refugees and migrants to reside in the community while their migration status is being resolved or while awaiting deportation or removal from that country²³. Indeed according to the IRPA and its regulations (section 248) specifically oblige authorities to consider, "before a decision is made on detention or release: (e) the existence of alternatives to detention."

As noted in the 2012-2013 Red Cross annual report, many of the protection concerns which have been raised and are continually raised to the CBSA can be mitigated through the consistent use of appropriate alternatives to detention.

Good alternatives to detention programs are preferable to detention because, broadly speaking: they allow individuals to maintain their freedom and reduce the need for the loss or restriction of their movement; and they can reduce the negative impacts of detention on individuals such as family separation or breakdown, or psychological trauma, which can lead to later difficulties for integration or constructive engagement in the community²⁴.

3.1 Principles of Alternatives to Detention

There are several types of alternatives to detention programs. They can be placed along a continuum from complete liberty to the highest restriction-detention²⁵. For example, at the least restrictive end of the continuum, a migrant may be released on their recognizance but asked to deposit their documents to border officials. While on the most restrictive end of the continuum, a migrant may be put into a detention facility.

Like detention, alternatives to detention programs should be developed and implemented based on the standards and principles set out in international and national law. This is important to ensure that any progressive increase in the restriction of an individual's movement does not become arbitrary, but in fact is justifiable,

²³ As cited in Sampson, R., Mitchell, G and Bowring, L. (2011) *There are Alternatives: A handbook for preventing unnecessary immigration detention*, Melbourne: International Detention Coalition, p. 2

²⁴ UHNCRC Canada-US Binational Roundtable on Alternatives to Detention see <http://www.refworld.org/docid/515178a12.html>, p. 4, last retrieved February 3, 2015.

²⁵ UNHCR 2012, Detention Guidelines & Alice Edwards, 'Back to basics: The Right to Liberty and Security of Person and 'Alternatives to Detention' of Refugees, Asylum-Seekers, Stateless Person and Other Migrants, UNHCR, Legal and Protection Research Series, PPLA/2011/01.Rev.1. April 2011



reasonable and proportionate to what is needed with regard to the IRPA. In addition to the principles in section 2, the CBSA should also ensure that:

- Alternatives to detention should be considered whenever a decision to detain is being made.
- Alternatives to detention should not be used as **alternative forms of detention**; nor should they be used for people who would **otherwise be released**²⁶.
- There should be proper screening and assessment to assist in determining the vulnerability, needs and placement of individuals.
- All persons released to an alternative to detention program should still have access to support services such as, health, housing, legal etc.
- There should be case management of each individual to ensure comprehensive support throughout the immigration process;
- There should be regular, up to date information provided to persons as their immigration case progresses, including information about all possible outcomes of their immigration case. This can also be provided through an effective case management system.
- There should still be access to an appeals process and complaint mechanism.
- There should be regular and independent monitoring of the alternative to detention.

3.2 British Columbia 2013 Roundtable on Alternatives to Detention

To move the alternatives to detention dialogue forward, in October 2013, a regional roundtable was held in Vancouver, British Columbia. The roundtable was organized through collaboration between the UNHCR, the Canadian Red Cross Society and the Kinbrace Community Society. Participants represented a range of stakeholders, including federal and provincial government ministries, international organizations and representatives from various local community-based organizations. The purpose of the roundtable was to;

- Share key messages from the 2011 Global and 2012 Canada-US Bi-National Roundtables²⁷ on alternatives to detention;

²⁶ Ibid...pg. 9

²⁷ The 2011 global roundtable in Geneva, Switzerland, was one of many attempting to create dialogue around alternatives to detention. For a summary report of the event go to <http://www.refworld.org/docid/4e315b882.html> and for a summary report of the Canada-US binational alternatives to detention see, <http://www.refworld.org/docid/515178a12.html>, last retrieved August 18, 2014.



- Draw lessons from State practices and empirical research in the exploration and establishment of alternatives to detention models;
- Exchange information on issues such as screening, risk assessment, community support, monitoring and supervision, and review of other alternatives, including bail, release on own recognizance; and
- Increase cooperation and collaboration between authorities and civil society in order to find alternatives to detention for vulnerable groups in Vancouver.

While the recommendations coming out of the roundtable were regionally specific, many could easily be adapted and applied Canada-wide by the CBSA. Below are some specific examples:

- Minimize the detention of families with accompanying minors at the front end of their immigration process;
- Develop a common definition and reference point or threshold for "vulnerability", especially for (a) mental health (b) unaccompanied minors.
- Obtain and share more disaggregated data on the demographics of those in detention to inform any discussion of ATD;
- Consider the implications of and distinct needs for alternatives to detention at the front-end versus back-end of the process;
- Explore or create a model for case management;
- Explore further use of reporting by phone, including cell phones and smart phone video conferencing; and
- Explore alternative methods of and/or increased use of existing reporting methods.

The full report of this roundtable has been shared with the CBSA at the regional and national levels.



4. Overview of Immigration Detention in Canada

In 2013-2014, the CBSA detained 10,088²⁸ immigration detainees in 138²⁹ various facilities across Canada. This included 6,355 (58% of all detainees) persons detained in the three active federal IHCs operated by the CBSA: the short-term British Columbia Immigration Holding Centre (BC IHC) at the Vancouver International Airport, Quebec's Centre de Surveillance de l'Immigration (CSI) and the Toronto Immigration Holding Centre (TIHC). Some detainees were also held at the Pacific Region Inland Enforcement Section (PRIES) for a short period (up to a day) while awaiting their hearings. The other 3,733 detainees (42% of the detainee population) were held in adult and juvenile detention facilities under the control and management of other federal (e.g. RCMP) and/or provincial/territorial authorities in Alberta, British Columbia, New Brunswick, Newfoundland and Labrador, Nova Scotia, Manitoba, Ontario, Quebec, Saskatchewan and the Yukon, and at facilities operated by municipal police detachments (e.g. Vancouver Police Department's city jail).

Of the total detained population, 17% were refugee claimants detained for an average of 20 days and 1.9% were minors (1.7% unaccompanied minors and 0.2 % accompanied minors detained for an average length of 10 days). These statistics continue to not capture minors who are Canadian citizens who are in detention facilities with their detained foreign national or permanent resident parent/guardian, or in some regions, minors de facto detained with their accompanying parent/guardian. The Red Cross has identified both minors and refugee claimants as particularly vulnerable groups.

²⁸ All statistics in this section are taken from the CBSA, "2013-2014 Detentions at a Glance" and the CBSA NCMS Detention Activity Cube with statistics on persons detained, disaggregated by province, facility, location, gender and age range for 2013-2014.

²⁹ Ibid.



5. Protection Issues

The Red Cross sees persons in detention as potentially vulnerable. Their freedom of movement has been limited to a restricted area and their security and well being are directly under the control of the detaining authority. As stated in the outcomes of the UNHCR 2012 Canada/US Bi National Roundtable on Alternatives to Detention of Asylum Seekers, Refugees, Migrants and Stateless Persons in Buffalo, New York, "detention produces negative emotional, psychological and physical effects on asylum-seekers and their families. This is true even during short-term periods of detention, as well as for persons who may not be classified as "vulnerable" under government criteria. The effects of detention can endure long after release..." (page 3). For this reason the Red Cross sees persons in immigration detention in Canada requiring protection. This means ensuring that the authorities: (1) respect their obligations and the rights of individuals, and (2) undertake all efforts to ensure that persons are, at all times, treated with dignity and respect and are held in a manner which ensures their safety. It also means ensuring that the detaining authorities are aware of and actively carry out this responsibility in this regard.

The following protection issues identified during the 2013-2014 fiscal year pertain to the following thematic areas:

- Mental health in detention,
- Minors in detention,
- Legal guarantees,
- Co-mingling,
- Family contact,
- Use of restraints, and
- Red Cross access to immigration detainees

The report also identifies areas of opportunity in which the CBSA can greatly improve detention conditions and most importantly, create options which would significantly reduce the number of people in detention.

5.1 Mental Health in Detention

The World Health Organization (WHO) defines mental health as "a state of well-being in which every individual realizes his or her own potential, can cope with the normal stresses of life, can work productively and fruitfully, and is able to make a contribution



to her or his community”³⁰. The World Health Organization (WHO) also notes that there are several factors in a detention environment³¹ that can negatively impact the mental health of a person in a detention facility. Some of these factors may include: “overcrowding, various forms of violence, enforced solitude or conversely, lack of privacy, lack of meaningful activity, isolation from social networks, insecurity about future prospects (work, relationships, etc.), and inadequate health services, especially mental health services, in prisons.”³²

The Red Cross has identified that the mental health of detainees in detention is a growing area of concern and will be presenting a proposal to conduct a study on mental health in detention in Canada to the CBSA in the 2014-2015 fiscal year.

5.1.1 Mental Health and Suicide in Immigration Detention

The WHO has stated that there is an increased risk of suicide³³ in prisons (often related to depression) and that this risk is often a result of the cumulative effect of many of the factors noted above³⁴. Moreover, studies from the UK and Australia have both demonstrated that there are significantly higher levels of suicide and self harm among immigration detainees than among the [general] prison population³⁵. The multiple traumas experienced among this sub-group of detainees, as well as the disempowerment, uncertainty with regard to immigration proceeding and isolation (in some cases as a result of family separation) faced simultaneously likely contribute to these increased rates. Other contributing factors to an increase incidence of suicide amongst detained migrants could be;

- Stigma and erroneous beliefs about suicide and mental health within the host community and by the detaining authority;

³⁰ World Health Organization, http://www.who.int/features/factfiles/mental_health/en/, Last retrieved February 2, 2015.

³¹ World Health Organization and the International Committee of the Red Cross (ICRC), (2007) *Mental Health in Prisons* http://www.euro.who.int/_data/assets/pdf_file/0007/98989/WHO_ICRC_InfoSht_MNH_Prisons.pdf last retrieved August 25, 2014. Note that, “For simplicity, the terms ‘Prison’ and ‘Prisoner’ are used in this Information Sheet, but should be taken as applying to all persons detained, incarcerated or imprisoned in a facility on the basis of, or allegation of, a criminal offence, whether the facility is called a prison, jail, detention center or otherwise.”

³² Ibid.

³³ According to the WHO, “Suicide is the act of deliberately killing oneself...” last retrieved February 3, 2015. The Canadian Association for Suicide Prevention notes that “many factors and circumstances can contribute to someone’s decision to end his/her life. Factors such as loss, addictions, childhood trauma or other forms of trauma, depression, serious physical illness, and major life changes can make some people feel overwhelmed and unable to cope. It is important to remember that it isn’t necessarily the nature of the loss or stressor that is as important as the individual’s experience of these things feeling unbearable.

³⁴ Ibid ...p. 1

³⁵ Dudley, M., “Contradictory Australian national policies on self-harm and suicide: the case of asylum seekers in mandatory detention.” (2003) *Australasian Psychiatry*, 11 Supp: 102-108.



- A tendency by detaining authorities to interpret threats of suicide as attempts by detainees to delay removal;
- Detainees' lack of help-seeking behavior due to cultural perceptions of mental illness and stigma;
- Detainees' prior history of self-harm and/or mental illness, and susceptibility for asylum seekers and victims of torture;
- Inadequacy of healthcare services, including mental health and suicide prevention.

In December 2013, the Red Cross was made aware of the tragic suicide attempt and eventual death of an immigration detainee held at the British Columbia Immigration Holding Centre (BC IHC). This death underscores the challenging nature of and obligations to respond to mental health needs in detention. The Red Cross has submitted a report to the CBSA's After-Incident Working Group with a summary of observations and recommendations related to the at the BC IHC.

5.1.2 Access to Mental Health Services

In 2013-2014, the Red Cross noted that detainees at the Toronto Immigration Holding centre (TIHC) and Quebec, Centre de Surveillance de l'Immigration (CSI) now have access to psychiatric care due to a change in the medical agreement, increasing the availability of psychiatric medical personnel onsite.

Detainees in the IHC who are experiencing issues beyond the capacity of treatment within the facilities may be taken to a correctional facility or a hospital. In the provinces where there are no IHCs and persons are detained in correctional facilities, detainees will receive treatment in provincial/municipal correctional facilities (PCFs) or taken to a hospital if the situation warrants. However placing an immigration detainee in a correctional facility simply to receive psychiatric care is not an appropriate response to providing care for a detainee with a mental health problem and/or illness. Correctional facilities are not primary health care facilities and should not be used as such.

Further to this, the lack of continuity in case management for individuals in detention may lead to gaps in detainees accessing medical (and other) services, particularly if persons are moved between various facilities.



5.1.3 CBSA Notifications - Persons Unable to Appreciate the IRB's Proceedings

The CRCS-CBSA MoU³⁶ obliges the CBSA to notify³⁷ the Red Cross when a person has been deemed unable to appreciate the nature of the proceedings, following the first detention review by the IRB³⁸. This notification allows the Red Cross an opportunity to monitor how the detention system responds to the particular vulnerabilities of persons. Currently discussions to further outline the process for notifications have been established in British Columbia, Ontario and Quebec. In the 2013-2014 reporting period, the Red Cross did not receive any notifications of persons being deemed unable to appreciate the nature of the proceedings from the CBSA.

This notification was put into the CRCS-CBSA MoU based on the common understanding that immigration detainees, who may be experiencing issues with their mental health or cognitive abilities, are extremely vulnerable and require additional support. Therefore in order to monitor the systems put in place (where the Red Cross has access to monitor) to accommodate and protect such individuals, it is important the CBSA comply with the MoU and provide notifications to the Red Cross as the 2006 agreement indicates.

5.1.4 Designated Representatives

As noted in the 2012-2013 report, there is a gap in support and protection for persons who may experience mental health problems and/or illnesses during their detention, in between the stipulated 48 hour, 7 day and 30 day detention reviews³⁹. While a DR may be assigned to an individual on the specific day of the detention review, immigration detainees may either develop or manifest mental health issues in the time period in between detention reviews before the IRB. For example an immigration detainee would have to wait up to 30 days to be assigned a DR if one was not assigned in their previous

³⁶ Section 2.2 of the 2006 CRCS-CBSA MoU states that; Following the first detention review by the Immigration and Refugee Board (IRB), the CBSA will notify the Red Cross, either verbally or in writing, when the following occurs: the detention of a person under the age of 18; the detention of a person deemed unable, in the opinion of the applicable division of the IRB, to appreciate the nature of the proceedings pursuant to *IRPA* s 167(2).

³⁷ Refer to section 1.2.1 for more information on the notifications.

³⁸ The IRB will determine a person's inability to understand the proceedings based on; admissions by the person who is the subject of the proceedings concerning his or her inability to understand what is going on; the testimony or report of an expert on the mental health or cognitive abilities of the person who is the subject of the proceedings; the behavior observed at the hearing (namely, the responses of the person who is the subject of the proceedings to the questions that are put to him or her); and the observations of the parties. <http://www.irb-cisr.gc.ca/Eng/BoaCom/references/LegJur/Pages/GuideIdSi07.aspx#n751> , last retrieved, February 3, 2015.

³⁹ Any person subject to a proceeding before a Division of the Immigration and Refugee Board or Minister shall have a representative designated to them if either under the age of 18 or, in the opinion of the applicable Division, is unable to appreciate the nature of proceedings. Ultimately, the role of the DR may be surmised as to represent an individual a claim/application before the IRB in a way that will protect their interests, help them understand and guide them through the process, and to help the represented person bring forward the best possible case to the applicable Division.



30 day review; this may represent a gap. This means that this individual has no additional support in that lengthy time period.

Furthermore, persons will only benefit from the DR during proceedings before the IRB, and may not have the benefit of a DR during CBSA-led processes, such as interviews or interrogations. As the outcomes of these interviews can impact a detainee's immigration proceedings, it is important that persons have the support of a DR, or someone acting in a similar role, from the point of their detention to the moment they are released. Further to this, persons released to the community will also need support; however, there is no consistent system to ensure that persons being released are referred to an appropriate local agency.

5.1.5 Case Management

One approach the Red Cross recommends to address some of these gaps in services for detainees is the use of a case management system. According to the UNHCR 2012 Revised Detention Guidelines, "case management has been identified as an important component in several successful alternatives to detention, and also an aspect of good asylum systems" (p. 44).

In general, a case management system refers to a "comprehensive and coordinated service delivery approach"⁴⁰ for individuals with various needs. In the Canadian context of immigration detainees, a case management would mean ensuring that a case worker coordinate the housing, legal, health and other social needs of migrants, while also providing critical psycho-social support throughout the entire detention (including those placed into an alternative to detention program) process. A consistent case management approach across Canada would allow the CBSA to:

- Reduce the number of persons in detention through better screening and assessment of migrants and asylum seekers needs. For example the case worker can determine the type of alternatives to detention appropriate to the individual and their particular situation;
- Reduce the length of time an individual is in detention by providing continual and timely follow up on their case;
- Ensure that individuals have access to legal counsel, health and other vital services in a timely manner;
- Provide information to immigration detainees in real time, reducing anxiety and uncertainty. This is particularly important for persons who do not have legal

⁴⁰ Ibid ...p30.



counsel and do not have access to the internet while detained and do not have other support systems to help manage the various immigration needs;

- Track vulnerabilities that may develop while an individual is detained in a timely manner, which would allow CBSA case officers to manage the complete file of a detainee from the beginning to end;
- Provide ongoing or ensure there is psycho social support, particularly for those who are in detention;
- Ensure that detention does not impede immigration proceedings and appearances; and
- Provide any necessary support for persons being removed, e.g. contacting families in destination country.

Currently, the Red Cross understands that the CBSA has limited case management approaches. The CBSA engages in case management in a broader sense through the Detainee- and Jail- Liaison officer in British Columbia, Alberta (in Alberta this is a temporary position which was put in place in March of 2013) and Ontario. The CBSA also provides limited case management to detainees who are being removed in order to facilitate the removal process. In order for case management to be effective, it must be done in a consistent and systematic way.

In Quebec, the CBSA implemented a system in which every detainee at the Centre de détention de Rivière-des-Prairies (RDP) receives a follow-up every 45 days by a CBSA. These meetings allow the officers to do a follow-up of the detainee in person and to make recommendations for detention reviews.

5.2 Minors in Detention

According to the CBSA detentions at a glance, 197 minors (176 accompanied and 21 unaccompanied) minors were detained in the 2013-2014 period at an average of 10.6 days⁴¹. The Red Cross regards minors⁴² in detention as one of the most vulnerable groups of persons and reiterates that, in accordance with article 37 of the United

⁴¹ CBSA, 2013-2014 *Detentions at a Glance*.

⁴² Article 1 of the *United Nations Convention on the Rights of the Child*, defines a child as "...every human being below the age of eighteen years unless, under the law applicable to the child, majority is attained earlier. Article two of the UNCRC obliges states parties to ..."respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child's or his or her parent's or legal guardian's race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status."



Nations Convention on the Rights of the Child (UNCRC) of which Canada is a signatory, and several other international instruments, the detention of children must only be used as a measure of last resort and for the shortest appropriate period of time. It is important to note as a best practice that states such as the United Kingdom have implemented a 'no detention of minors' policy.

5.2.1 Statistical Accounting of Minors

The Red Cross remains concerned that CBSA national statistics do not fully reflect all minors who are in the detention facilities. Specifically, the statistics do not include minors who are Canadian citizens and others who are not formally part of a detention order. In 2012, the CBSA indicated that their statistics would capture all detained minors including those minors who are *de facto* detained (accompanying their parent or guardian and not formally part of a detention order). To date, the Red Cross has not observed a reflection of these minors in the overall national statistics. The Red Cross recognizes that some regions have shadow systems to account for accompanied minors. This means that facilities will record all minors who are detained in their facilities, regardless of detention status, in their facility statistics; however, the minors are still not fully reflected in national statistics. The Red Cross reiterates that all minors, including those who are Canadian citizens and accompanying a detained guardian/parent(s), are under the authority of the CBSA and must appear as part of the statistical record in order for the CBSA to comply with international standards. It is important that nationally the CBSA has a clear picture of the total number of minors who are in their facilities, regardless of whether they are on a formal detention order. This would allow the CBSA to develop better policies and standard operating procedures, and ensure the provision of services to all minors in their facilities.

5.2.2 Detention of Families with Minors

Currently the CBSA detains families, including families with minors, in immigration detention facilities across Canada. The Red Cross has observed positively that families with minors in British Columbia are now systematically moved to the BYCSC from the BC IHC if their detention continues beyond the 72 hours. While this change is positive, the Red Cross notes that families should not be detained and alternatives to detention should be immediately sought for them. Where the CBSA does detain families, they should be held in a space that can accommodate the whole family together. It should be in a facility with natural light and regular access to the outdoors, and with appropriate spaces and equipment for minors such as books and toys.



5.2.3 CBSA Notification of Minors

The MoU between the CBSA and the Red Cross obliges the CBSA to notify⁴³ the Red Cross when a minor, particularly vulnerable cases such as unaccompanied minors, is detained. This notification allows the Red Cross an opportunity to monitor how the detention system responds to the particular vulnerabilities of minors.

The Red Cross still noted a few challenges in receiving notifications in some regions and for some categories of minors. Staffing changes in the CBSA Prairie regional office has meant a temporary suspension of notifications⁴⁴. The Red Cross will continue to work with the CBSA to ensure that notification processes are established.

5.2.4 Designated Representatives

According to Citizenship and Immigration Canada (CIC), "the designated representative [DR] is responsible for protecting the interests of the minor or the person who is unable to appreciate the nature of the proceedings, as well as explaining the process to them⁴⁵. This role is critical in ensuring that, for both vulnerable groups (minors and persons unable to appreciate the nature of the proceedings), there is someone who can act in their best interests before Immigration and Refugee Board (IRB) proceedings.

The Red Cross recognizes the important role of the Designated Representative for all minors in immigration detention, particularly for those minors who are unaccompanied and detained. In the case of a detained minor, the DR's involvement would generally commence at the 48-hour detention review (which is also the first detention review). This means that unaccompanied minors who are detained and who do not have counsel, may have no one representing their best interests or helping them understand and navigate the detention process for that two-day period. This overall lack of guardianship at the point when an unaccompanied minor is first detained raises protection concerns for the CRCS. Additionally, minors who are 16 and 17 in Ontario do not always have the benefit of child protection ministries involved in their case. In the period where a minor has no designated representative or

⁴³ Section 2.2 and 2.2.1 of the CRCS-CBSA MOU states, "following the first detention review by the Immigration and Refugee Board (IRB), the CBSA will notify the CRCS, either verbally or in writing, when the following occurs; the detention of a person under the age of 18 years; the detention of a person deemed unable, in the opinion of the applicable division of the IRB, to appreciate the nature of the proceedings pursuant to Section 167 (2) of the IRPA". To support this provision, the Canadian Red Cross has developed internal Standard Operating Procedures to guide internal processes and responses to these notifications.

⁴⁴ The notification process has been re-established in this region, and will be discussed in Annual Report for 2014/15.

⁴⁵ IRB, "Designated Representative's Guide", <http://www.irb-cisr.gc.ca/Eng/BoaCom/references/LegJur/Pages/GuideDesRep.aspx>, last accessed, September 13, 2013.



the involvement of a child protection ministry, a minor may not have their best interest represented by any one.

One way to avoid gaps in protection and guardianship for minors is through the establishment of a case management system. As noted above (see section 5.1.5), a case management approach would allow the CBSA to have one person coordinating the services for minors and families with minors from the first point of contact to their release or removal from Canada.

5.3 Legal Guarantees

Section 10 of the *Canadian Charter of Rights and Freedoms* states that everyone has the right, on arrest or detention, to retain and instruct counsel without delay and to be informed of that right yet despite this, the Red Cross has observed several barriers to immigration detainees fully enjoying this right.

5.3.1 Access to Information

One of the most common issues consistently observed is detainee's general lack of understanding as to why they are being detained. Further, immigration detainees in general seem unaware of or have difficulty obtaining information regarding their specific immigration case, difficulty in accessing counsel, understanding the process to make a refugee claim, understanding alternative protection processes such as the Pre-Removal Risk Assessment and the Humanitarian and Compassionate application, and options for appeal. The Red Cross has noted that a contributing factor to this difficulty has been the availability and consistency with which written information is provided to immigration detainees as well as their lack of access to the internet, public libraries and immigration support agencies.

In the 2013-2014 period, the CBSA revised and made the *Information for People Detained under the Immigration and Refugee Protection Act* brochure available to detainees. This brochure contains basic information on IRPA, policy of treatment, detainees' rights and general information about what to expect in a detention facility. This brochure is also available in 16 languages. Those who are transferred to many provincial correctional facilities are unable to keep their belongings with them. As a result, the brochure provided by CBSA may be securely stored and only be accessed upon request and placed back into storage when finished. Detainees may be unable to take the brochure with them to peruse or refer to while in detention in non-CBSA facilities.



Further to that, immigration detainees in general, do not receive additional information regarding the refugee determination process, alternate protection processes and/or various available appeal processes. For those detained in correctional facilities, without legal counsel, obtaining this information is vital and can make a difference in the outcome of their immigration case. It is especially important to have this information at the ready given that there are short timelines within many of the application processes.

Persons who are detained in correctional facilities should not receive less information than those detained in federal facilities.

5.3.2 Access to Counsel

The Red Cross has previously highlighted a persistent concern that immigration detainees face challenges accessing counsel. This is particularly acute in provincial correctional facilities. For example, in some correctional facilities, detainees have 20 minutes for phone calls which makes discussing immigration cases with counsel at length and in any substantive manner very difficult. In turn, it is also challenging for counsel to contact detainees. This is because detainees may have scheduled phone times that have been predefined, which do not always correspond with counsel's availability. At other facilities, detainees may only be able to make collect calls or make local calls where the cost of the calls can be prohibitive for detainees in maintaining regular contact with their counsel. Persons in IHCs do not face these constraints in contacting counsel, which highlights the serious disparity in all detainees' ability to access critical services equally across the country. An additional challenge in maintaining regular access with counsel is that detainees are sometimes held in facilities that are located far from the downtown core. These distances make it challenging for counsel to travel to the facilities and discuss matters with their clients.

5.4 Co-mingling

The continued practice of co-mingling of immigration detainees with criminal populations in provincial correctional facilities contravenes international standards such as the *International Covenant on Civil and Political Rights* (ICCPR) and the *United Nations Standard Minimum Rules for the Treatment of Prisoners* and in many ways can negatively impact the well being of an immigration detainee. As noted in the previous Red Cross annual reports, immigration detention is different than criminal detention because it has a fundamentally different operational purpose. Immigrants are detained under the *IRPA* to ensure their full participation in the administrative functions of the Act; while criminal suspects are detained under the *Criminal Code* to prevent them from



committing harm while ensuring a judicial determination of their criminal charges under the Code.

Specifically, the purpose of administrative detention under IRPA is to ensure the administrative compliance of the IRPA and not to punish individuals. Under the Criminal Code, an individual may be imprisoned to denounce unlawful conduct, to deter the offender and other persons from committing offences, or to provide reparations for harm done to victims or to the community⁴⁶.

The United Nations *Standard Minimum Rules for the Treatment of Prisoners* offer the most specific provisions related to the issue of co-mingling. Principle 8 of the *Rules* states in part:

The different categories of prisoners shall be kept in separate institutions or parts of institutions taking account of their sex, age, criminal record, the legal reason for their detention and the necessities of their treatment. Thus...(c) Persons imprisoned for debt and other civil prisoners shall be kept separate from persons imprisoned by reason of a criminal offence...4 (emphasis added).

In the 2013-2014 period, the CBSA continued to house immigration detainees in provincial correctional facilities and the situation of co-mingling remained unchanged.

5.4.1 Detention in a Provincial Correctional Facility

The CBSA retains the legal obligation to care for all immigration detainees and therefore should ensure that all CBSA minimum standards, national and international are applied and complied with, regardless of their place of detention.

The Red Cross continues to observe several challenges for immigration detainees who are in correctional facilities. They include:

- The incidence of co-mingling immigration detainees with criminal populations in very restrictive environments. Immigration detainees in general receive the same treatment as those detained under the *Criminal Code*. This means that many of the particular needs of immigration detainees are not met. This can impact their overall health including mental health and even the outcome of their case;
- Limited access to CBSA personnel to ensure access to and to review information about the immigration/detention process;

⁴⁶ *Criminal Code*, RSC 1985 c 46, s. 718.



- The lengthy distance between some correctional facilities, and the downtown core which makes it difficult for families and legal counsel to visit with detainees. This also means travelling long distances in handcuffs and shackles to and from hearings;
- Less access to and availability of legal aid and other support services;
- An overall more restrictive high security environment;
- Increased exposure to violence;
- Less ability for CBSA to have oversight over detainees;
- Lack of distinction by corrections personnel between immigration detainees, their non-criminal status and the general prison population.

5.4.2 Impacts of Co-mingling

In previous Red Cross annual reports submitted to the CBSA, the Red Cross expressed concern that:

- Detainees co-mingled in correctional facilities exhibit signs of stress and mental health issues which could be attributed to co-mingling with criminal populations and prolonged detention. Detainee accounts support this claim and describe the practice of co-mingling as extremely stressful. This is a particular concern for refugee claimants who may have experienced armed conflict, torture, and other traumatic experiences.
- Co-mingling presents a greater degree of risk to immigration detainees who are co-mingled with a volatile corrections population, some serving or awaiting trial (in the case of a remand or pre-trial facility) for violent or gang-affiliated crimes. The Red Cross is concerned that immigration detainees could inadvertently experience physical, psychological or emotional harm.
- The Red Cross is concerned about the co-mingling of immigration detainees with persons with mental health disorders in the same unit or cell. While facilities may do this to lessen the risk of exposure to more violent offenders, detainees in these units generally have less time outside.

Overall detention in a correctional facility is not an appropriate facility to house immigration detainees and continues to present protection concerns to the Red Cross.



5.5 Family Contact

The right to contact and to maintain contact with family for detained persons is protected within the *Body of Principles for the Protection of All Persons Under Any Form of Detention or Imprisonment*,⁴⁷ which state, "A detained or imprisoned person shall have the right to be visited by and to correspond with, in particular, members of his family." In all previous verbal and written annual reports, the Red Cross has highlighted the barriers immigration detainees often face in maintaining contact with family while in detention and that additionally the ability to contact family varies across Canada, depending on where they are detained. In the 2013-2014 monitoring period, the Red Cross observed that several of these barriers still exist.

For example, those detained in all provincial correctional facilities are unable to receive calls and making calls from these facilities is often challenging. Facilities such as the Centre de détention de Rivière-des-Prairies (RDP) in Quebec cannot accommodate collect calls to cell phones. In many countries around the world people rely on their cell phones as their primary medium for communication. In addition, the automated options in the phone system in correctional facilities in the Pacific and Prairies region are all in English. Therefore, if a family member does not speak English often times they will not recognize they are receiving a collect call and hang up.

The CBSA Quebec and Pacific have allowed detainees' access to contacting family overseas through their offices, facilitated through the CBSA Detainee Liaison Officer. This requires transporting detainees from various facilities to get to the CBSA office to make a phone call. The CBSA also provides calling cards and indigent cards for urgent calls.

The Red Cross has observed that the phones at the CSI federal facility in Quebec are often defective and regularly out of order despite regular maintenance. Further to this vending machines can take days and sometimes weeks before they are restocked with calling cards.

5.5.1 Contact Visits With Family

It is challenging for minors, spouses and family members to have contact visits with their parent/guardian detained in a correctional facility. The regulations for contact visits in correctional facilities are much more restrictive than those in IHCs and either does not allow for contact visits with children and spouses or has limited visitation. Contact visits with family in general is important, but is even more critical for detainees

⁴⁷ United Nations General Assembly, *Body of Principles for the Protection of All Persons Under Any Form of Detention or Imprisonment*, A/RES/43/173 (8 Dec, 1988).



who are completing immigration applications for their whole family and need to confer with them. It is also very important for those who are being removed and for the families who remain, to have an opportunity to say goodbye.

It is important to again highlight the fact that detainees in the federal facilities in Quebec and Ontario have much more access to contact visits. The CBSA NSMP guidelines 7 as a standard require that federal facilities ensure that: contact visits are allowed where possible; visiting hours are extended beyond weekdays; and that persons can have a maximum of four visitors a day.

5.5.2 Video Conferencing

The Red Cross is also concerned that the move toward the use of video conferencing as the sole means to maintain family contact in facilities in Alberta (Edmonton) may negatively impact family contact. This replacement of contact visits by video conferencing is a particular concern for the Red Cross for persons facing imminent removal from Canada. This will mean that those facing removal may not be able to have contact visits with their children, spouses and other family members. Video conference may be a good solution for those whose family cannot travel frequently or at all to visits; however, it should not be the sole option and means of family contact.

The CBSA should be cognizant that the restriction of family visitation can also contribute to the deterioration of mental health and well being of detainees, particularly in situations of long-term detention. This restrictive measure is also a stark contrast to those persons in IHCs according to the CBSA National Standards and Monitoring Plan and Operations of a CBSA Detention Facility 7 (NSMP), which encourages contact visits of up to four visitors per day, at a maximum of two persons at one time. Visitation can also be extended beyond the work week⁴⁸.

5.6 Use of Restraints

The Red Cross has repeatedly raised the concern that detainees held in correctional and federal facilities are handcuffed and shackled during transportation from places of detention to medical appointments and hearings. Immigration detainees are subject to a blanket restraint policy, meaning that all persons, including those deemed vulnerable, are restrained. In addition, immigration detainees held in provincial correctional

⁴⁸ CBSA (2002) "CBSA National Standards and Monitoring Plan for the Regulation and Operation of CBSA Detention Centres (DCs)" at 7 "Administrative".



facilities are restrained in accordance with the security protocols of these facilities. Given that these facilities are maximum security facilities, the use of restraints is more prevalent than the medium security federal IHCs.

The function of immigration detention is not punitive. Immigration detainees are not criminals and should not be treated as such. Further to the use of restraints can negatively impact the well being of persons who are in detention and can potentially contribute to deteriorating mental health. Therefore any decision to restrain ought to be based on an actual presumption of risk and not a practice based on a blanket policy.

5.7 Red Cross Access to Immigration Detainees

Article 2.1.2 of the MOU between the CBSA and the Red Cross states that "The CBSA will endeavour, to the fullest extent possible and subject to any lawful limitations, enable the Red Cross access to persons detained pursuant to the IRPA at detention facilities under the control and management of other Federal, Provincial, Territorial or Municipal authorities".

In the 2013-2014 reporting period, the Red Cross has maintained access to all federal IHCs and some provincial correctional facilities⁴⁹ in British Columbia, Alberta and Quebec, as well as the municipal jail operated by the Vancouver Police Department (see section 4 for full list of facilities).

5.7.1 Access to immigration detainees in Atlantic Canada

In the 2012-2013 annual report, it was noted that the Red Cross Detention Monitoring Program could not begin monitoring activities in Nova Scotia, specifically the Central Nova Scotia Correctional Facility (CNSCF), until an agreement between the CBSA and the Nova Scotia Department of Justice (NSDoJ) had been signed. In the 2013-2014 reporting period an agreement had not been finalized and, as such, the Red Cross did not begin detention monitoring activities.

⁴⁹ See section 4 "Overview of the Red Cross Monitoring Activity" for a full account of the detention facilities to which the Canadian Red Cross had access.



5.7.2 Access to Immigration Detainees in Provincial Correctional Facilities in Ontario

In 2013/2014, the CBSA held 6,302⁵⁰ persons in immigration detention in Ontario. Of this number 42% or 2647, of detainees were held in various non CBSA (IHC) facilities. This remains a concern to the Red Cross as the CBSA is unable to have independent monitoring of immigration detainees in provincial correctional facilities and therefore independently confirm that persons are held in compliance to domestic and international standards that govern the detention of migrants.

The Red Cross understands that access to monitor immigration detention in any provincial correctional facility in Ontario is contingent upon an agreement being finalized with the Ontario Ministry of Community Safety and Correctional Services.

5.7.3 Access to Immigration Detainees in Prairies Region – Manitoba

Building on the initial discussions in 2012/2013 regarding the Red Cross monitoring of immigration detainees in Manitoba, the Red Cross Western Canada and CBSA Prairies Region and the Manitoba Corrections Division, Department of Justice, finalized Red Cross access to immigration detainees in Manitoba provincial correctional facilities. Detention monitoring activities in the Winnipeg Remand and Headingly Correctional Centres will commence in the 2014/15 fiscal year.

⁵⁰ NCMS Detention Activity Cube with statistics on persons detained, disaggregated by province, facility, location, gender and age range for 2013-2014.



6. Recommendations

Many of the recommendations offered below are cross cutting and apply to various areas of concern. As such the recommendations are represented on a chart for ease in referencing.

Chart Showing CRCS Recommendations and Applicable Areas of Concern

Recommendation	Protection Concern(s)
<p>1. The Canada Border Services should ensure that alternatives to detention are a primary consideration in situations where persons are most vulnerable such as unaccompanied minors and minors with parents and guardians, all families, refugee claimants, pregnant women and persons requiring physical and mental health support, the elderly, victims of trafficking, and survivors of torture or trauma.</p>	<ul style="list-style-type: none"> ▪ Alternatives to Detention ▪ Mental health in detention ▪ Minors in detention ▪ Legal guarantees ▪ Co-mingling ▪ Family contact ▪ Use of restraints
<p>2. The Canada Border Services should develop a national strategy for alternatives to detention.</p>	<ul style="list-style-type: none"> ▪ Alternatives to Detention ▪ Mental health in detention ▪ Minors in detention ▪ Legal guarantees ▪ Co-mingling ▪ Family contact ▪ Use of restraints
<p>3. The Canada Border Services should ensure that alternatives to detention are available in all provinces, considered in all cases and consistently applied across the country.</p>	<ul style="list-style-type: none"> ▪ Alternatives to Detention ▪ Mental health in detention ▪ Minors in detention ▪ Legal guarantees ▪ Co-mingling ▪ Family contact ▪ Use of restraints



4. The Canada Border Services should ensure that there is case management for each individual providing comprehensive and appropriate support throughout the immigration process.
 - Alternatives to Detention
 - Mental health in detention
 - Minors in detention
 - Legal guarantees
 - Co-mingling
 - Family contact
 - Use of restraints
5. The Canada Border Services should institute regular monitoring and evaluation of cases to ensure that all regions are fully maximizing all alternatives to detention currently available to them.
 - Alternatives to Detention
 - Mental health in detention
 - Minors in detention
 - Legal guarantees
 - Co-mingling
 - Family contact
 - Use of restraints
6. The Canada Border Services should ensure that alternatives to detention programs adhere to key principles and standards as set out in international and national standards, including ensuring that there is appropriate oversight.
 - Alternatives to Detention
 - Mental health in detention
 - Minors in detention
 - Legal guarantees
 - Co-mingling
 - Family contact
 - Use of restraints
7. The Canada Border Services should develop and implement a case management system to ensure that there is complete oversight over an immigration detainee's case and timely support where needed.
 - Mental health in detention
 - Minors in detention
 - Legal guarantees
 - Co-mingling
 - Family contact
 - Use of restraints



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| <p>8. The Canada Border Services should ensure that there are qualified medical professionals present in all facilities to conduct health assessments including physical and mental screenings during the intake process to a facility and prior to removal.</p> | <ul style="list-style-type: none">▪ Mental health in detention |
| <p>9. The Canada Border Services should ensure that all immigration detainees, regardless of detention location, have access to appropriate mental health services including, but not limited to, counselling, psychological and/or psychiatric services; Persons who are considered to be experiencing mental health issues should receive treatment according to their needs and not be detained or forcibly removed.</p> | <ul style="list-style-type: none">▪ Mental health in detention |
| <p>10. The Canada Border Services should work with federal and provincial authorities to develop internal capacity to better cope with persons with mental health issues including any emergency mental health situation. This should include training on issues such as psychological first aid⁵¹ and suicide intervention, clear health protocols when a person is identified as having a mental health need, facilities equipped with emergency call buttons and the removal of items that may be used for self harm.</p> | <ul style="list-style-type: none">▪ Mental health in detention▪ Co-mingling |
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⁵¹ According to Sphere (2011) and IASC (2007), psychological first aid (PFA) describes a humane, supportive response to a fellow human being who is suffering and who may need support. PFA involves the following themes: providing practical care and support, which does not intrude; assessing needs and concerns; helping people to address basic needs (for example, food and water, information); listening to people, but not pressuring them to talk; comforting people and helping them to feel calm; helping people connect to information, services and social supports; protecting people from further harm.
http://www.searo.who.int/srilanka/documents/psychological_first_aid_guide_for_field_workers.pdf?ua=1, last retrieved February 3, 2015.



11. The Canada Border Services should not use a correctional facility or municipal jail as a means of the provision of mental health care for an individual.

- Mental health in detention
- Co-mingling
- Use of restraints

12. The Canada Border Services should make training available for those officers who manage and oversee the case and custody of immigration detainees which focuses on developing the ability to interact effectively with people from different cultural/ethnic backgrounds and socio-economic groups.

- Mental health in detention
- Minors in detention
- Legal guarantees
- Co-mingling
- Family contact
- Use of restraints

13. The Canada Border Services should ensure that the environment immigration detainees is housed in does not negatively impact the health and well being of detainees. This means that there should be natural light and fresh air in all facilities and those persons should have the ability to go outside. In addition, if minors and families are being detained, there should be a space that is appropriate for them. There should be room to keep families together and a space appropriately equipped for minors and families with minors.

- Mental health in detention
- Minors in detention
- Legal guarantees
- Co-mingling
- Family contact
- Use of restraints

14. The Canada Border Services should work with the IRB to ensure there is a mechanism to assess and respond to persons who may need the support of a Designated Representative in between IRB proceedings.

- Mental health in detention



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15. The Canada Border Services should notify the Red Cross, as the MoU stipulates, when, following the first detention review, the IRB deems a person unable to appreciate the nature of the proceedings.
- Mental health in detention
 - Minors in detention
16. The Canada Border Services should not detain minors unless in extremely exceptional cases. When detention occurs it must only be in the best interest of the minor and for the **shortest period possible**.
- Minors in detention
17. The Canada Border Services should ensure that the best interest of the child is always the primary consideration in any decision to pursue the detention of a minor, including any decision to separate a minor from his or her custodial parent/guardian.
- Minors in detention
18. The Canada Border Services should implement a national minor policy and supporting operating procedures governing the standard conditions and treatment of all minors in detention. This policy should specifically address minors who have additional vulnerabilities, such as those who are unaccompanied, those who may have been trafficked or those who require special physical and mental health support. The policy should also be clear in providing guidelines for those minors who are not on a formal detention order. This policy and operating procedures should
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take into consideration alternatives to detention, all new legislation and reflect the highest protection afforded to minors within both domestic and international standards.

19. The Canada Border Services should ensure that there is someone who can represent the best interests of minors from the first point of contact with the CBSA to their release or removal.
 - Minors in detention
20. The Canada Border Services should ensure that the CBSA publication *Information People Detained under the Immigration and Refugee Protection Act* is available to detainees in all facilities and at all times.
 - Legal guarantees
21. The Canada Border Services should ensure that those in provincial correctional facilities have continued access to CBSA information and any additional information regarding immigration processes. This information can be placed in the facility library so that detainees can access it when needed. The CBSA and facility staff should make detainees aware of how to access this information.
 - Legal guarantees
22. The Canada Border Services should work with Citizenship and Immigration Canada, local legal aid and immigration support agencies to provide locally appropriate and contextualized information on how to access legal services as well as information on the various immigration processes and corresponding timelines.
 - Legal guarantees



23. The Canada Border Services should house detainees in facilities that are easily accessible to detainees' legal counsel.
- Legal guarantees
24. The Canada Border Services should move toward housing all immigration detainees in a facility operated by the CBSA and under their guidelines.
- Legal guarantees
 - Co-mingling
25. The Canada Border Services should continue to staff the Detainee and Jail liaison role in all provinces where provincial correctional facilities are being used for detention.
- Legal guarantees
 - Mental health in detention
 - Co-mingling
26. The Canada Border Services should ensure that immigration detainees in correctional facilities are kept separate from persons who have been criminally charged or convicted. Contact between the two populations should be avoided – including during meals, transport and recreation activities. Separation of populations should not impact an immigration detainee's access to appropriate cultural, educational, and physical activities to which they are entitled. Separation should, at a minimum, be at the cell level.
- Legal guarantees
 - Mental health in detention
 - Co-mingling
27. The Canada Border Services should ensure that immigration detainees across Canada can enjoy similar rights, support services and are not subjected to variable detention conditions as a result of their place of detention.
- Legal guarantees
 - Co-mingling



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28. The Canada Border Services should ensure that regardless of their place of detention, (including those in correctional facilities, municipal jails and CBSA-run facilities), all detainees have an opportunity to communicate with their family overseas or in Canada in accordance with CBSA's national standards at a minimum.
- Family contact

29. The Canada Border Services should ensure that detainees are fully aware of the opportunity and procedures regarding both local and long distance calling. All information regarding the phone regulations should be available in detainees' facility information package in both IHCs and provincial correctional facilities. It should also be clearly visible near phones and available in multiple languages. The Red Cross also encourages the CBSA, where possible, to assist detainees who cannot afford to call families.
- Family contact

30. The Canada Border Services should establish a process whereby all detainees upon arrest are provided with one call to a family member of their choosing to notify that they are safe/well.
- Family contact

31. The Canada Border Services should ensure that video conferencing remains an option for immigration detainees who have families who cannot visit them in person.
- Family contact

32. The Canada Border Services should ensure that all persons detained, especially those awaiting
- Family contact
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removal are informed and provided with timely and open access to in-person family visits, as well an opportunity to call family overseas and Canada before their removal.

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| 33. The Canada Border Services should continue regular maintenance of the phones in all IHCs so there is no disruption in service and the ability to call family. | ▪ Family contact |
| 34. The Canada Border Services should recognize the non-punitive nature of immigration detention and consider the negative impact of the use of restraints on the health and well being of persons detained pursuant to the IRPA. | ▪ Use of restraints |
| 35. The Canada Border Services should review its restraints policy to ensure that restraints are only used when deemed necessary. This determination should be made after a vulnerability assessment. | ▪ Use of restraints |
| 36. The Canada Border Services should not detain immigration detainees in provincial correctional facilities. These facilities have higher security thresholds and requirements than immigration detention facilities and regularly handcuff and shackle as part of their security protocol. | ▪ Use of restraints
▪ Co-mingling |
| 37. The Canada Border Services should establish, maintain and/or ensure that there is independent monitoring of detention of all persons held under IRPA either by the Red Cross or any other appropriate monitoring body. | ▪ Red Cross access to immigration detainees |



7. Conclusion

Many of the protection issues highlighted in this report and in previous reports remain largely unaddressed. While some positive changes were noted in the 2013-2014 period, there are some persisting issues which require urgent attention. The Red Cross continues to urge the CBSA to work diligently to improve the detention environment for all persons detained pursuant to IRPA and ensure compliance with all applicable national and international standards.

The Red Cross welcomes further dialogue on these issues and looks forward to a meeting to discuss the recommendations after the report's submission to the Vice-President, Programs and the Vice-President, Operations, of the CBSA.

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