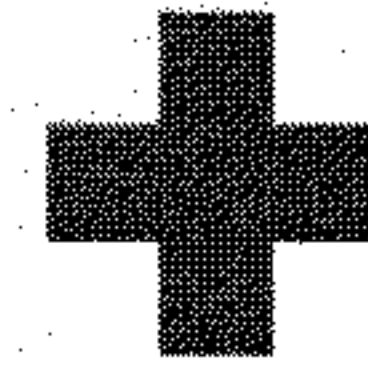




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**CANADIAN RED CROSS SOCIETY
ANNUAL REPORT ON
DETENTION MONITORING ACTIVITIES
IN CANADA**

2012-2013

CONFIDENTIAL



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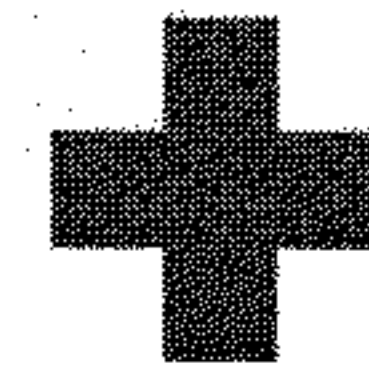
List of Abbreviations

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
ERC	Edmonton Remand Centre
FRCC	Fraser Regional 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
MOU	Memorandum of Understanding
NFPC	North Fraser Pre-trial Centre
NGO	Non Government Organization



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NS DoJ	Nova Scotia Department of Justice
NSMP	National Standards and Monitoring Plan for the Regulation & Operation of CBSA Detention Centre
PCF	Provincial Corrections Facility
PRIES	Pacific Region Inland Enforcement Section
RDP	Centre de détention de Rivière des Prairies
RFL	Restoring Family Links
SPSC	Surrey Pre-trial Services Centre
TBP	Toronto Bail Programme
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



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Executive Summary

The Canadian Red Cross Society (CRCS) is a neutral, independent humanitarian organization, with a mission to improve the lives of vulnerable people.

In accordance to the MoU between the Canada Border Services Agency (CBSA) and the CRCS, the CRCS monitors the treatment and conditions of persons detained in Canada under the Immigration and Refugee Protection Act (IRPA).

The following report summarizes the CRCS' detention monitoring activities, observations and findings over the reporting period of January 2012 – March 2013. The report also provides recommendations to the Vice-President, Programs and the Vice-President, Operations, of the CBSA.

Overall, the CRCS identified eight overarching areas where protection gaps were present. These were;

- Access to immigration detainees;
- Legal guarantees;
- Minors in detention;
- Co-mingling;
- Mental health in detention;
- Access to family contact;
- Alternatives to detention; and
- Designated Foreign Nationals.

CRCS Recommendations

The CRCS makes the following recommendations to the CBSA in response to the protection concerns identified in the report.

Access to Immigration Detainees

1. The CBSA should continue to work with its provincial partners to establish and/or maintain the independent monitoring of all persons held under IRPA (in provincial correctional facilities in Ontario and across Canada) either by the CRCS or any other appropriate agency.



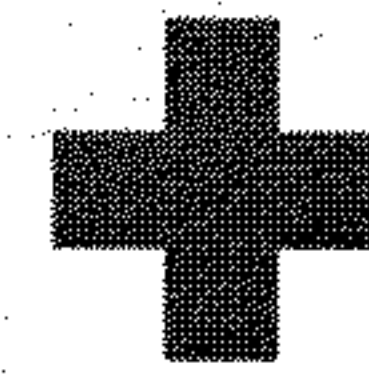
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Legal Guarantees

2. The CBSA must provide information to detainees that is comprehensive and contains information on; their rights, specific information about their detention, the facility and available support services and basic information on immigration and appeal processes. The CBSA should work with local legal aid and immigration support agencies to provide locally appropriate and contextualized information on how to access these services.
3. The CRCS is encouraged that the CBSA has revised the *Information for People Detained under the Immigration and Refugee Protection Act* brochure to reflect some of the new legislative and policy changes. The CRCS is also encouraged that the CBSA has translated the document into 16 languages with plans to distribute the brochure widely. The CRCS encourages the CBSA to not delay its distribution. Providing detainees with critical and updated information about their detention should be the highest priority. The CRCS also encourages the CBSA to establish clear guidelines around the distribution of this material including who is responsible for ensuring each detainee, regardless of which detention facility they are held in, has access to this material at all times during their detention.

Minors in Detention

4. The CBSA must 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.
5. The CBSA has an obligation to consider alternatives to detention for all minors. Deprivation of a minor's liberty must only be used as a measure of last resort and for the shortest appropriate period of time. The CBSA must ensure that all provinces have available alternatives to detention for minors and families with minors. Family separation should not occur due to a lack of capacity to appropriately accommodate a minor and/or a family.
6. The CRCS reiterates that the CBSA should implement a national minor policy and operating procedures governing the conditions and treatment of all minors



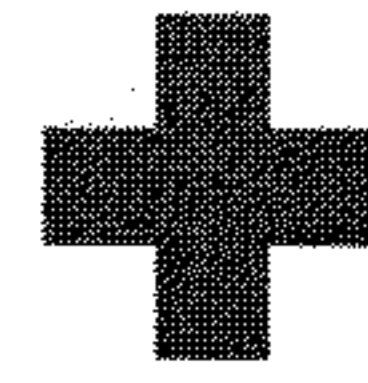
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in detention. This policy should specifically address minors who have additional vulnerabilities, such as those who are unaccompanied, those who may have been trafficked or those who require special physical and mental support. The policy should also be clear in providing guidelines for those minors who are not on a formal detention order. This policy and operating procedures should take into consideration alternatives to detention, all new legislation and reflect the highest protection afforded to minors within both domestic and international standards.

7. The CRCS encourages the CBSA to work with the IRB to expand the role of the Designated Representatives beyond the IRB processes. Specifically, this role should include the involvement of the DR from the first point of detention of the unaccompanied minor and throughout their detention continuum, until release. This will ensure that there is someone who can represent the best interests of a minor at all times. The CBSA should work with community partners such as child protection ministries, local NGOs and law firms to establish ways to ensure there are no gaps in protections for unaccompanied minors.

Co-mingling

8. All immigration detainees must be held in conditions that meet the minimum standards outlined in the CBSA NSMP Guidelines. CBSA retains the legal obligation to care for all immigration detainees and therefore should actively ensure that all minimum standards are applied, regardless of the place of detention.
9. Until such time that all immigration detainees can be provided with an opportunity for an alternatives to detention, or at the very least, housed in CBSA operated facilities and under CBSA guidelines, the CRCS recommends that the CBSA place immigration detainees in those facilities that are best suited to them and not place them in facilities where they are co-mingled with criminal populations.
10. The CRCS recommends that the CBSA appropriately monitors provincial correctional facilities to ensure detainees are held according to the CBSA



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standards. To ensure the guidelines are properly followed, the CRCS recommends that the CBSA's oversight be expanded in all correctional facilities housing immigration detainees and that CRCS or another independent body gains access to such facilities to carry out mandated monitoring duties.

11. The CBSA should take the positive example of the ACCW, where facility management have assigned a case manager to IRPA detainees. Assigning a case manager to IRPA detainees ensures detainees receive timely and regular support by facility staff. The CRCS encourages the CBSA to work with various provincial authorities to establish a similar system in other facilities. As noted above, the CBSA Detainee/Jail Liaison officer position should also be available to all regions, in addition to the corrections officer case manager.
12. In correctional facilities, immigration detainees should be 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 on an immigration detainee's access to appropriate cultural, educational, and physical activities to which they are entitled. Separation should, at minimum, be at the cell level.

Immigration Detention in Provincial Correctional Facilities and CBSA Facilities

13. The CBSA retains full and ultimate legal responsibility for persons detained pursuant to the IRPA. As such, the CBSA must ensure that all immigration detainees enjoy similar rights and support services and are not subjected to variable detention conditions as a result of their place of detention capacity constraints.
14. The CRCS encourages the CBSA to conduct regular reviews of its facilities and day-use holding cells to ensure that they meet health and safety standards and conform to the requirements outlined in the CBSA National Standards and Monitoring Plan (NSMP) as well as any national applicable and regulations. The CRCS also encourages the CBSA to not delay and/or consider facility



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renovations/expansion plans that can ensure that detainees are held in environments that do not place undue risk to their mental and physical health.

Mental Health in Detention

15. The CBSA must 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.
16. Detainees in both IHCs and provincial correctional facilities are at an increased risk of developing or exacerbating mental health issues, particularly persons who have experienced trauma and those on long-term detention hold by the virtue of the deprivation of their liberty. Therefore the CRCS encourages the CBSA to explore alternatives to detention to reduce the number of persons detained and the length of time they spend in detention, particularly for vulnerable groups such as minors, families, refugee claimants and persons who require greater physical and mental support.
17. The CRCS encourages the CBSA to work with the CRCS regional offices towards developing a notification process that allows the CRCS to respond to all persons who may be deemed unable to appreciate the IRB proceedings.
18. The CBSA should be cognizant that while in detention a person's mental health may deteriorate in between IRB proceedings and as such should work with the IRB to ensure that there is a mechanism to assess and respond to persons who may need the support of a DR in between IRB proceedings.

Access to Family Contact

19. The CBSA must ensure that all detainees, in both immigration holding centres and correctional facilities, are given adequate opportunity to communicate with family overseas or in Canada.
20. The CBSA must 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



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information package in both IHCs and provincial correctional facilities. It should also be clearly visible near phones and available in multiple languages. The CRCS also encourages the CBSA, where possible, to assist detainees who cannot afford to call families.

21. Video conferencing should remain an option for immigration detainees who have families who cannot visit them in person. Video conferencing, however, should not be the sole means by which detainees have contact with family in particular persons who have children and persons who are about to be removed. The CBSA should ensure that all persons under their detention authority have equal opportunity to have family contact in person and through video as stipulated in CBSA NSMP.
22. The CBSA must ensure that those awaiting removal are provided with timely and open access to in-person family visits.

Use of Restraints

23. In IHCs, the CRCS encourages the CBSA to perform individual assessments in order to determine whether the need for restrictive measures during transportation, medical appointments and hearings is absolutely necessary.
24. For those detainees' transferred/in provincial facilities, the CRCS encourages the CBSA to increase sharing of necessary information with correctional staff, to assist in appropriately evaluating detainees' level of risk. This would lead to restrictive measures being used only after an evaluation has indicated it is necessary and would overall reduce the application of restrictive measures used on immigration detainees.

Designated Foreign Nationals

25. The CRCS encourages the CBSA to make all written information for DFNs available in multiple languages to ensure that DFNs fully understand their specific circumstances.



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26. The CRCS recommends that the CBSA ensures that procedures are put in place to reduce the potential impact of mandatory and prolonged detention on all persons who could be considered vulnerable, including unaccompanied minors, separated minors, families with minors, refugee claimants, pregnant women and persons who require additional physical and mental support.

Alternatives to Detention

27. The CRCS encourages the CBSA to consider and actively pursue a national strategy for alternatives to detention to ensure wide availability and consistent application across the country.
28. The CRCS recommends that the CBSA ensures that alternatives to detention are available in all provinces and should be considered in all cases as part of the decision on to detain a person. In addition, alternatives to detention should be a primary consideration in cases where persons are most vulnerable, such as unaccompanied minors, families with minors, refugee claimants, pregnant women and persons requiring physical and mental support.



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1. Introduction

The Canadian Red Cross Society (CRCS) is a neutral, independent humanitarian organization. The mission of the CRCS is to improve the lives of vulnerable people by mobilizing the power of humanity in Canada and around the world.

The 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 CRCS monitor the treatment and conditions of immigration detainees in detention facilities.

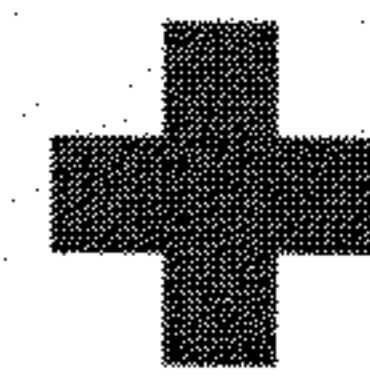
An agreement to monitor immigration detention conditions was first established between the CRCS and Citizenship and Immigration Canada (CIC) in 2002. On the 3rd November 2006, the CRCS entered into a Memorandum of Understanding (MOU) with the Canada Border Services Agency (CBSA), to reflect the transfer of the enforcement of the IRPA from the CIC to the CBSA. The MOU mandates the CRCS to monitor the conditions of persons detained under the Immigration and Refugee Protection Act (IRPA). Article 3.1 of the MOU provides that the CRCS "...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 CRCS is hereby submitting the 2012-2013 DMP Annual Report. This report summarizes the CRCS' detention monitoring activities, identifies discrepancies between the CBSA's detention practices and standards and provides recommendations where appropriate to the Vice-President, Programs and the Vice-President, Operations, of the CBSA.

Key sections include:

- a brief presentation of the CRCS detention monitoring program mandate and work methodology;
- an overview of the CRCS monitoring activities in 2012-2013;
- a summary of protection concerns;
- recommendations to the CBSA; and
- a conclusion.

In 2012, the CRCS DMP moved from reporting by the calendar year to the fiscal year. To accommodate this change and with agreement from the CBSA, this report will



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capture monitoring activities for all of 2012 (1 January to 31 December) and the first quarter in 2013 (1 January to 31 March). The following report will cover detention monitoring activities from April 1 2013 to March 31 2014.

1.2 The CRCS Detention Monitoring Program

The DMP provides independent monitoring of detention facilities. The aim of the programme is to promote a protective environment that recognises the rights of immigration detainees as set out in international and domestic standards and laws. This work is carried out in accordance with the MOU between the CBSA and the CRCS and supported by the *Canadian Red Cross Detention Monitoring Guidelines* (hereinafter the DMP Guidelines). These guidelines include a national minimum service delivery and care standards.

1.2.1 The Work of the CRCS Detention Monitoring Program

Pursuant to the MOU, the CRCS monitoring work focuses on four areas:

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

Where the CRCS 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 CRCS' monitoring work generally focuses on systemic issues rather than individual cases. This involves understanding the policies, standard operating procedures and mechanisms in which a facility operates, including how staff is trained and how services are provided to the detainees. This approach ensures that system-wide recommendations benefit all current and future detainees. However, where



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appropriate and with the express consent of the detainees, the CRCS will raise specific issues brought forward by detainees during interviews.

Within the parameters of the CRCS 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 CRCS 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.

1.2.2 The CRCS Detention Program Monitoring Team

The DMP Program is implemented through the DMP team, at the national and regional levels and is comprised of qualified staff members and detention monitoring volunteers¹. When planning for a site visit, given the sensitive nature of conducting interviews, the CRCS considers 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 as well as volunteers trained to provide Restoring Family Links (RFL) services.

The CRCS 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 CRCS 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

¹ 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. Volunteers must then regularly submit updated criminal record Checks. To ensure all volunteers have the appropriate knowledge and skills to carry out responsibilities, each volunteer must also successfully complete the mandatory training program. New team members are mentored in their work by seasoned monitors to ensure that the high quality of service provided by the CRCS is maintained.



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- 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.

1.3 Detention Monitoring Visit - Methodology and Reporting Process

The CRCS endeavours to conduct a minimum of four monitoring visits per year to each Immigration Holding Centre (IHC) and non-CBSA facilities to which the CRCS has access. The CRCS may choose to visit a facility less than four times per year if the detainees are typically held on an infrequent basis. In addition to monitoring visits, the CRCS 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 define future actions to strengthen the quality of services and care provided to immigration detainees. Additionally, the CRCS personnel from British Columbia and Alberta meet with provincial corrections authorities annually.

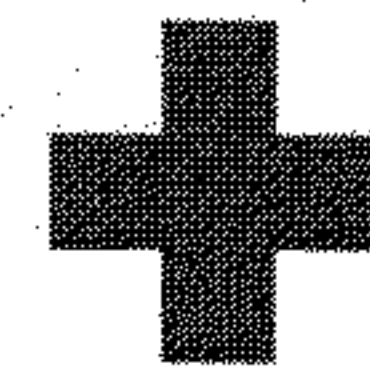
The work of the CRCS DMP, program standards and monitoring framework are all modeled after the procedures of the ICRC. This has allowed the CRCS to draw on global experience and best practices with regard to detention monitoring. An outline of the CRCS detention monitoring visit is as follows:

- A monitoring visit begins with a meeting with the CRCS and the facility director or his/her designate, followed by a short explanation of the CRCS mandate in the facility, as well as a follow-up on items from previous visits.
- The facility representative then provides a general update on the facility's population and conditions, including demographic information on the detainees, such as the number of detainees by gender and nationality.
- The visiting CRCS team will also ask specific questions to identify particularly vulnerable detained persons. Facility representatives are asked about detention conditions, trends or any overall changes in the population or incidents within the facility.



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- After the briefing with the facility representative, the team will conduct a tour of the facility. Conducting a facility tour assists the team in understanding 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 workshop, visiting room, segregation area, kitchen and health services area.
- Following the facility tour, the CRCS will then meet with detainees. The CRCS representatives will typically present their mandate to a group of detainees, distribute a sheet that explains the CRCS mandate in various languages and invite detainees to speak with team representatives if they wish. Sometimes, detainees share issues in a group setting while others request a private interview. The CRCS team members will take note of any issues and/or concerns raised during the interviews.
- After concluding the confidential interviews with detainees, the CRCS 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: outline general observations regarding conditions at the facility; indicate what is working well, and what is not; with prior consent of the detainee, address areas of specific concern to individual detainees; recommend actions and agree on a timeframe with facility representatives to deal with areas of concern. The CRCS normally concludes the visit after the debriefing.
- Internal and confidential Red Cross site visit reports are then prepared to highlight and monitor any trends in protection concerns. 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 staff will be referred to the CRCS detention monitoring national manager who will determine the appropriate follow-up.
- As mandated by the MOU, an annual written report is drafted and shared with the CBSA. This report consolidates and synthesizes all the observations made by the DMP throughout the reporting period. It captures positive developments but

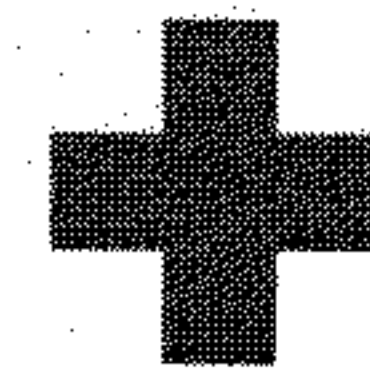


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also outstanding concerns that have not been addressed. The report is national in scope and provides the CBSA with information and recommendations towards improving the support to persons detained.

1.4 Overview of the CRCS Monitoring Activity in 2012-2013

In 2012-2013, immigration detainees were held in various facilities across Canada. This includes the three active federal IHCs operated by the CBSA: the short-term British Columbia Immigration Holding Centre (BC IHC) at Vancouver International Airport, Quebec's Centre de Surveillance de l'Immigration 1 (CSI) and the Toronto Immigration Holding Centre (TIHC). Persons were also held during interviews and/or hearings at holding facilities operated by the CBSA, such as the Pacific Region Enforcement Centre (persons are only held for the day while awaiting their hearings), detention facilities under the control and management of other federal (e.g. RCMP) and/or provincial authorities in British Columbia, Alberta, Quebec, Ontario, Nova Scotia, Newfoundland and Labrador, New Brunswick, Manitoba, Saskatchewan and the Yukon, and at facilities operated by municipal police detachments (e.g. Vancouver Police Department's city jail). A significant number of immigration detainees are held short-term in local police detachments.

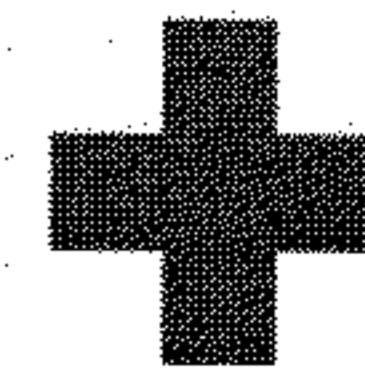


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1.4.1 Detention Monitoring Visits in 2012-2013 (January 1, 2012-March 31, 2013)

CRCS Detention Monitoring Visits 2012-2013

Province	Facility	Number of times visited
Alberta	Calgary Remand Centre	7
	Edmonton Remand Centre	5
British Columbia	Alouette Correctional Centre for Women	2
	British Columbia Immigration Holding Centre	6
	Burnaby Youth Custody Services Centre	2
	Fraser Regional Correctional Centre	6
	North Fraser Pre-Trial Centre	7
	Surrey Pre-trial Services Centre	3
	Holding cells at Pacific Region Enforcement Centre	4
	Vancouver Island Regional Correctional Centre	2
	Vancouver City Jail	1
Nova Scotia	Central Nova Scotia Correctional Facility	2*
Ontario	Toronto Immigration Holding Centre	6
Québec	Centre de Surveillance de l'Immigration	4
	Centre de détention de Rivière des Prairies	6
Total		63



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In the 2012-2013 monitoring period, the CRCS DMP carried out 63 detention monitoring visits. These visits included regular site visits and unscheduled responses to cases where there were particularly vulnerable persons involved such as the detained unaccompanied minors and/ or persons unable to appreciate the nature of IRB proceedings.

Over half of all monitoring visits take place in the Pacific and Prairies regions in both the IHC and provincial correctional facilities. This, in part, is reflective of the fact that the CRCS has the most access to immigration detainees in those regions.

2. Protection Issues

The CRCS has identified key concerns during monitoring activities in 2012-2013. These concerns represent non-compliance issues with regard to both national and international standards. They include:

- Access to immigration detainees;
- Legal guarantees;
- Minors in detention;
- Co-mingling;
- Mental health in detention;
- Access to family contact;
- Alternatives to detention; and
- Designated foreign nationals.

3. Access to Immigration Detainees

Article 2.1.2 of the MOU between the CBSA and the CRCS states that "The CBSA will endeavour, to the fullest extent possible and subject to any lawful limitations, to 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;". Currently the CRCS has access to all Federal IHCs and some provincial correctional facilities in British Columbia, Alberta and Quebec, as well as the municipal jail operated by the Vancouver Police Department. The CRCS continues to work with the CBSA to establish further CRCS access to immigration detainees in provincial correctional facilities.



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3.1 Expansion of the CRCS DMP in the Atlantic Region

In 2012, the CRCS began the process of expanding the DMP into the Atlantic region (Nova Scotia, New Brunswick and Newfoundland), beginning with Nova Scotia. Currently, in the Atlantic region, the CBSA does not operate a federal immigration detention facility, therefore anyone detained under the IRPA is held in a correctional facility.

The CRCS has initiated efforts to establish relationships with the CBSA Atlantic and the facility management at the Central Nova Scotia Correctional Facility (CNSCF) and the Nova Scotia Department of Justice (NSDoJ). All parties have shown support for the opportunity to have CRCS DMP and RFL programmes available to immigration detainees within the correctional facilities; however the NSDoJ has indicated that the CRCS cannot have access to monitor the facilities until an agreement has been put in place between the CBSA and the NSDoJ. Currently this agreement is being negotiated by the two parties. Like other provinces such as Alberta and British Columbia, this agreement will reflect the terms of CRCS access to monitor in the provincial correctional facilities. The CRCS is awaiting the finalisation of this agreement in order to commence monitoring activities. Once the CRCS is granted access to the Central Nova Scotia Correctional Facility, the CRCS will then begin to pursue access to immigration detainees in New Brunswick and Newfoundland.

3.2 Access to Immigration Detainees in Provincial Correctional Facilities in Ontario

In 2012, The CBSA held 2247² persons in immigration detention in Ontario provincial correctional facilities. Of these, 1964 were men and 283 were women³. Currently, the CRCS has not been granted access to monitor immigration detainees in any provincial correctional facility in Ontario. This remains a concern to the CRCS as the CBSA is unable to have independent monitoring of immigration detainees in that facility and therefore confirm that persons held in these facilities are held in compliance to domestic and international standards that govern the detention of migrants.

² NCMS Detention Activity Cube with statistics on persons detained, disaggregated by province, facility, location, gender and age range for 2012. Due to technical challenges with the collection of CBSA's statistics, the CRCS was unable to obtain data reflecting the first quarter of 2013

³ *ibid*



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The CRCS is aware of the current MoU negotiations between the CBSA and the Ontario Ministry of Community Safety and Correctional Services. This MoU will stipulate the terms and conditions with which immigration detainees are held in Ontario's provincial correctional facilities.

The CRCS has also had ongoing dialogue with the Ontario Ministry of Community Safety and Correctional Services, in order to seek access to the immigration detainees in correctional facilities in Ontario. The CRCS will continue to support both internal and external efforts to secure the independent monitoring of all persons held under IRPA (in provincial correctional facilities in Ontario and across Canada) either by the CRCS or any other appropriate agency.

3.3 Access to Immigration Detainees in Prairies Region – Manitoba

In 2012, the CRCS Western Canada and CBSA Prairies Region initiated dialogue with the Manitoba Corrections Division, Department of Justice, regarding CRCS access to immigration detainees in Manitoba provincial correctional facilities. There were 147 immigration detainees held in various correctional facilities in Manitoba. In response to this large number of immigration detainees, the CRCS identified the need to expand the Detention Monitoring Program to facilities in that province.

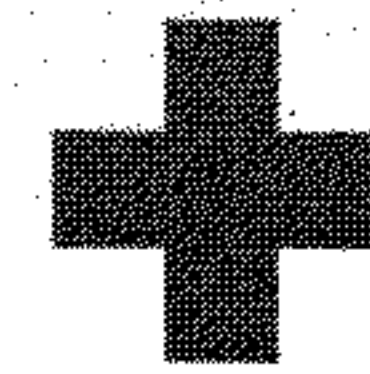
The CRCS will continue to work with CBSA in Prairies Region to secure DMP access to correctional facilities in Manitoba holding immigration detainees.

Please refer to Section 13.1 for Recommendations.

4. Legal Guarantees

The CRCS continues to observe various challenges with regard to the legal guarantees⁴ of immigration detainees, in both IHCs and correctional facilities.

⁴ Commensurate to the Section 4.3.3 of the MOU, the CRCS monitors detainees' legal guarantees, including access to counsel and/or legal information. The legal rights of immigration detainees are conferred under the Charter of Rights and Freedoms. Pursuant to the Charter of Rights and Freedoms Section 9, everyone [in Canada] has the right to not be arbitrarily detained. Further to that, the Charter also provides in Section 10, that everyone has the right, on arrest or detention, to retain and instruct counsel without delay and to be informed of that right.



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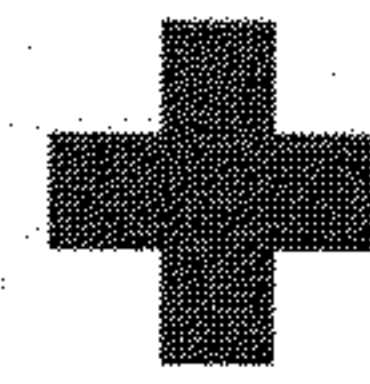
4.1.1 Access to Information

In 2012-2013 detainees continued to raise their difficulty with fully understanding the legal process surrounding their detention, applying for refugee protection, their specific immigration case, access to counsel, alternative protection processes such as the Pre Removal Risk Assessment and the Humanitarian and Compassionate review and options for appeal. The CRCS has noted that a contributing factor to this difficulty has been the availability and consistency with which written information is provided to immigration detainees.

Currently, the CBSA has a general brochure, *Information for People Detained under the Immigration and Refugee Protection Act*, which contains basic information on IRPA, policy of treatment, detainees' rights and general information about the detention facility. This brochure however does not provide basic information on the refugee determination process, alternate protection processes and/or various available appeal processes. The CBSA should keep in mind that while in detention, immigration detainees do not have the same access to information as non-detained persons. For example immigration detainees have limited or no access to IRB country information, public libraries and the internet, all of which can assist detainees in preparing their application for refugee protection. This presents as an even wider information gap for those detainees who do not have counsel and are self represented throughout their process.

Moreover, this brochure is only available in English and French which means that detainees in all facilities who speak neither language receive less information to inform their legal process. It is also equally as important that the CBSA places due diligence in ensuring that detainees fully comprehend both written and verbal information they are given.

In the 2011 annual report, the CRCS highlighted that the CBSA was in the process of revising the aforementioned brochure and was expected to have it translated into multiple languages. In that report, the CRCS also encouraged the CBSA to start distribution of this brochure in 2012. To date the brochure has not been distributed. The CRCS now understands that this brochure will be available in the 2013-2014 fiscal year and will be available in 16 different languages. Until the new brochure is ready for distribution, the CRCS remains concerned that the existing brochure is still not being shared consistently to all detained persons across Canada leading to a persistent gap in information for immigration detainees.



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The Toronto Immigration Holding Centre (TIHC) has developed a detailed information package which detainees receive upon their detention at the facility. This package includes: the standard CBSA brochure *Information for People Detained under the Immigration and Refugee Protection Act*, specific detention centre information, information about the facility's health services, CBSA, copies of all request forms, available legal aid services in Ontario and the method of contact, religious support and worship, information on local NGO, Toronto Refugee Advisory Council (TRAC) (they provide support services to detainees including legal services), detainees daily schedule and visitors and visiting hours.

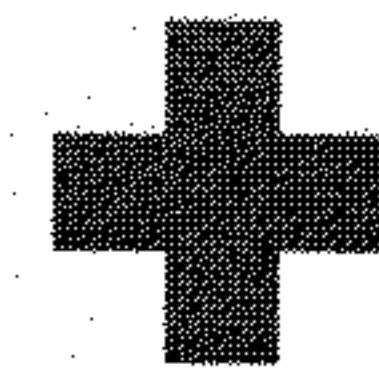
The CRCS sees that a facility package in a similar format of the TIHC brochure plus the addition of more specific information on the refugee determination process, alternative protection processes, regionally appropriate information on available legal aid services would be a better practice. All facilities where detainees are held should at a minimum have this level of information available to detainees.

The CRCS would also like to highlight that the current shortened refugee protection application timelines (which includes the compiling and processing refugee applications), brought on amendments to the IRPA, the Protecting Canada's Immigration System Act (PCISA), Short title-Bill C-31 2012, has necessitated that the CBSA provide comprehensive and timely access to information about the immigration processes and access to legal services.

4.1.2 Access to Counsel

The CRCS 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, in any substantive matter, very difficult. In turn, it is also challenging for counsel to contact detainees. This is also because detainees have set scheduled phone times which do not always correspond with counsel's availability. In other facilities, only collect calls are possible, even local calls, for a fee of \$0.75. This cost can be prohibitive for detainees to maintain regular contact with their counsel. Persons in IHCs do not face such constraints with contacting counsel, which highlights the serious disparity in all detainees' ability to access critical services equally across the country.

Please refer to Section 13.2 for Recommendations.



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5. Minors in Detention

The CRCS regards minors⁵ in detention as one of the most vulnerable groups of persons. This is because deprivation of liberty can have severe impacts on a minor in both the short and long term. Some of these impacts could significantly negatively affect the emotional, social and psychological well being of a minor. In fact, in an attempt to limit these negative effects, article 37 of the United Nations Convention on the Rights of the Child (UNCRC), clearly states that detention of children must only be used as a measure of last resort and for the shortest appropriate period of time. This standard is further reiterated by the 2012 revised UNHCR Detention Guidelines, 9.2.

Overall, the Canadian Red Cross continues to encourage the CBSA to not delay the development of national policies and practices which will ensure that any minor under the authority of the CBSA, regardless of their status (formal detention or not) is accounted for. These policies and practices should also enshrine the highest protection afforded to all minors by both domestic and international standards⁶.

5.1 Statistical Accounting of Minors

In 2012⁷, Canada detained an estimated 291 minors under the IRPA. Of those detained, 288 were held in federal facilities and three were held in provincial facilities (two in Ontario and one in British Columbia)⁸. These include unaccompanied and accompanied

⁵ Article one 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."

⁶ The rights of minors who are deprived of their liberty are set forth in various international standards and legislation such as the United Nations Convention on the Rights of the Child, United Nations Body of Principles for the Protection of All Persons under any form of Detention or Imprisonment (United Nations, 1988), the United Nations Basic Principles for the Treatment of Prisoners (United Nations, 1991), and the United Nations Standard Minimum Rules for the Treatment of Prisoners (United Nations, 1955). In general, domestic legislation and standards governing minors in Canada integrate the requirements of international standards and law. Domestic legislation applicable to minors include the Canadian Charter of Rights and Freedoms (Government of Canada, 1982), the IRPA and its regulations (Government of Canada, 2002b), and the Youth Criminal Justice Act (Government of Canada, 2002c) as well as provincial child protection legislation.

⁷ NCMS Detention Activity Cube with statistics on persons detained, disaggregated by province, facility, location, gender and age range for 2012. Due to technical challenges with the collection of CBSA's statistical data, the CRCS was unable to obtain data reflecting the first quarter of 2013.

⁸ NCMS Detention Activity Cube with statistics on persons detained, disaggregated by province, facility, location, gender and age range for 2012. Due to CBSA's technical challenges with their collection of statistical data, the CRCS was unable to obtain data reflecting the first quarter of 2013.



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minors on a formal detention order. The CRCS remains concerned that these national statistics may not reflect accompanied minors who are Canadian citizens and not formally part of a detention order. In 2012 discussions at the national level, the CBSA indicated to the CRCS that CBSA 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 CRCS has not yet seen a reflection of these minors in the overall national statistics. The CRCS recognizes that some regions have shadow systems to account for accompanied minors. This means that facilities will include all minors who are detained in their facilities, regardless of detention status, in their facility statistics. This CRCS reiterates that all minors, including those who are accompanying a detained guardian/parent(s), are under the authority of the CBSA and must appear as part of the statistical record.

5.2 Detention of Families with Minors

The CRCS has observed family units in immigration detention consistently throughout the reporting period. Currently, the CBSA does not have a facility that can appropriately accommodate a complete family unit of mother, father, and children and or a father /male guardian with a child without having to separate family members. The IHCs in Ontario and Quebec regularly house families; however, fathers or male guardians are moved to a separate male unit while mothers/female guardians remain with children. The situation is even more acute in provinces such as British Columbia where there are no CBSA operated facilities appropriately equipped to accommodate a detained family for the long term. Instead, the CBSA may rely on support from provincial facilities such as the Burnaby Youth Custody Services Centre (BYCSC) to house families.

The CRCS has also noted an increase in the number of families held in the BC IHC beyond the maximum detention limit. The BC IHC is a short term facility, where detention should not exceed 72 hours; however the CRCS has encountered families held at this short term detention facility in some cases for over a week. While the CRCS recognizes and commends the CBSA Pacific Region in the efforts to keep the family together and to accommodate the unique needs of minors and infants, the CRCS reiterates that detention for any period exceeding 72 hours at this facility is not appropriate, especially for vulnerable persons.



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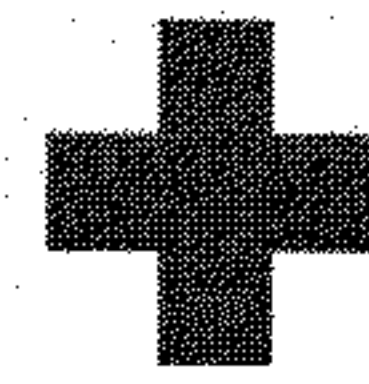
The CRCS understands that the CBSA has used the provincial youth custody facility BYCSC, to house some families for long stay detentions. This facility falls under the management of the British Columbia, Ministry for Child and Family Development (MCFD). The CRCS encourages the CBSA to formalize this partnership/agreement with MCFD in order to develop clear and established parameters on the timing of transfers from the BC IHC to the BYCSC. The CRCS also encourages the CBSA to review its overall capacity to appropriately house and keep families from being separated, as well as in the event of a mass arrival or a detention of a large group of persons (families with minors) such as designated foreign nationals. This review is more pressing given the mandatory and possible long term detention of persons under this designation. This review should also encompass a strategy for alternative to detention options for families.

5.3 CBSA Notification of Minors

As stated in the MoU between the CBSA and the CRCS, the CBSA will notify⁹ the CRCS when a minor, particularly vulnerable cases such as unaccompanied minors, is detained (the CBSA must also notify the CRCS of the detention of persons with mental health who are unable to appreciate the nature of IRB proceedings. For more information, see section 7.3, CBSA notification-persons with mental health concerns). This notification will allow the CRCS to respond within 24 hours by phone, unless action by the CRCS is not required. The details of how the notification process is specifically operationalized have been discussed and agreed upon by the CRCS and CBSA regions in Quebec (2012), the Prairie region (2011), British Columbia (2010) and in Ontario. The CRCS is continuing to work with its regional and national interlocutors to ensure that a clear and consistent notification process continues.

Despite this the CRCS 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 notifications. There is also the concern that the CRCS does not receive notifications for both minors who are accompanying their parents and persons with mental health concerns who are deemed

⁹ Under Section 2.2 and 2.2.1 of the MOU "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 CRCS has developed internal Standard Operating Procedures to guide internal processes and responses to these notifications.



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unable to appreciate the nature of the proceedings by the IRB in detention hearings subsequent to the first detention hearing, see section 7.3 for more information. The CRCS will continue to work with the CBSA to ensure that clear notification processes are established.

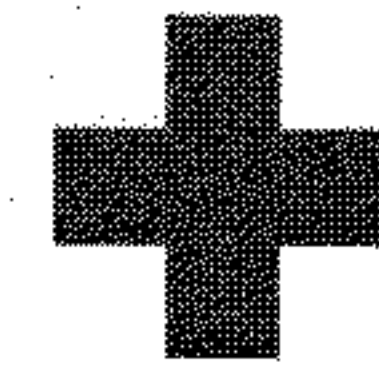
5.4 Designated Representatives

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 them¹⁰. 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 must act in their best interests before Immigration and Refugee Board (IRB) proceedings.

The CRCS 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. This overall lack of guardianship at the point when an unaccompanied minor is first detained raises protection concerns.

The CRCS has observed that provinces have set up different systems with regard to detained unaccompanied minors. For example, in Ontario, the Canadian Red Cross First Contact Programme signed and MoU with the CBSA on January 24th 2012. This agreement obliges the CBSA to notify the CRCS when an unaccompanied minor 16 and 17 has been identified at the Toronto Pearson International and Billy Bishop City Airport ports of entry and at the Greater Toronto Enforcement Centre (GTEC). The First Contact programme then informs McCarthy Tétrault law firm of the minor's presence. The firm then advises the First Contact Programme, within 24 hours, whether they are able to act as a Child Representatives (CR) to assist the minor in CBSA processes, such as port of entry examinations. This CR will remain with the minor until a DR can be

¹⁰ Designated Representative's Guide, <http://www.irb-cisr.gc.ca/Eng/BoaCom/references/LegJur/Pages/GuideDesRep.aspx>, last accessed, September 13, 2013



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assigned by the IRB at the 48 hour detention review hearing. The CR may remain with the minor as the DR for IRB processes if the minor wishes.

In BC, and similarly in Quebec however, the CRCS has observed protection gaps for unaccompanied minors age 16 and over who are detained, where there is limited involvement of the provincial ministry responsible for child protection and no assigned DR.

Please refer to Section 13.3 for Recommendations.

6. Co-mingling

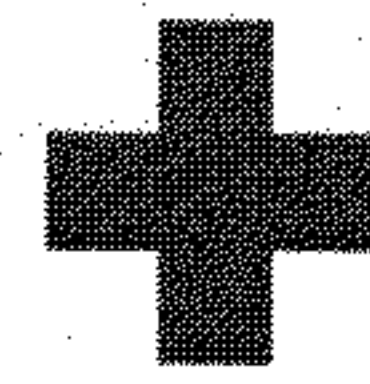
The CRCS understands that detention in correctional facilities occurs when persons (including refugee claimants) are detained in areas where no IHC exists or when detainees are in an area where the local IHC is at full capacity. Detainees are also placed in correctional facilities in cases of known or suspected security risk such as danger to the public and criminality.

In 2012, an estimated 3952¹¹ immigration detainees were housed in correctional facilities across Canada¹². Of this population, it was reported that some were co-mingled with criminal populations including those sharing the same cells or the same unit. As noted in previous reports to the CBSA, the co-mingling of immigration detainees with criminal populations across Canada remains a great concern to the CRCS. Specifically;

- The CRCS continues to observe that some detainees co-mingled in correctional facilities exhibit signs of stress and mental health issues. This 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 have experienced armed conflict, torture, and other traumatic experiences. According

¹¹ NCMS Detention Activity Cube with statistics on persons detained, disaggregated by province, facility, location, gender and age range for 2012. Due to technical challenges with the collection of CBSA's statistical data, the CRCS was unable to obtain data reflecting the first quarter of 2013.

¹² Persons were detained in correctional facilities in cases where no IHC exists or when detainees were in areas where the local IHC was at full capacity. Detainees were also housed in correctional facilities in cases of known or suspected security risk such as danger to the public and criminality.



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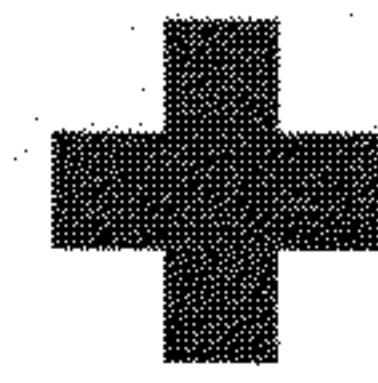
to a 2010 CRCS internal study on co-mingling¹³, it was recognised that there is the potential for re-traumatization for those immigration detainees who have existing mental health either pre-existing or induced during detention.

- 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 CRCS is concerned that immigration detainees could inadvertently experience physical, psychological or emotional harm due to exposure to violent or gang-affiliated criminals.
- The CRCS is concerned about the co-mingling of immigration detainees with persons with mental health disorders in the same unit or cell. The CRCS has observed this occurrence in facilities in both BC and Alberta. While facilities may do this to lessen the risk of exposure to more violent offenders, these units generally have less time outside and this may negatively impacts the overall well being of immigration detainees.

In 2012, the CRCS observed that in correctional facilities in Quebec and Alberta, the issue of overcrowding was a persistent concern. In some facilities triple bunking was and remains common, with IRPA detainees, at times, sleeping on a mattress on the floor with limited personal space. The CRCS has noted that some improvements have been made in Quebec, at the Centre de détention de Rivière des Prairies (RDP). In the first quarter 2013, the CRCS observed that detainees no longer slept on mattresses on the floor. However, the CRCS has noted that while all immigration detainees at RDP now have access to beds; other issues with overcrowding, such as the lack of available seating during mealtimes, remain.

The continued practice of co-mingling 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*. In 2012 UNHCR revised their Detention Guidelines re-emphasizing that "the use of prisons, jails, and facilities designed and operated as prisons or jails, should be avoided. If asylum seekers are held

¹³ In 2010 the CRCS conducted an internal study on the practice of co-mingling. This study was undertaken in order to increase the Canadian Red Cross Detention Monitoring Program's understanding of the policy and practice of co-mingling immigration detainees with criminal populations in Canada. The study also looked at the effects of these policies and practices in the conditions of detention for people detained pursuant to the *Immigration and Refugee Act* (IRPA).



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in such facilities, they should be separated from the general prison population. Criminal standards are not appropriate.”¹⁴

Notwithstanding the obligations listed above, the CRCS recognizes that comingling can occur at various levels and is working with provincial authorities and facility management where DMP has access, to address comingling at the cell, unit and/or facility-level depending on the realities within a particular province.

The CRCS has noted several positive developments in correctional facilities. For example, in 2012, the Alouette Correctional Centre for Women (ACCW) assigned a case manager to oversee, regularly visit and review the cases of all IRPA detainees at the facility. Previously, the CRCS had observed that all regular inmates at the ACCW received case managers while IRPA detainees did not. After discussions between the CRCS and the management, ACCW made the decision to provide IRPA detainees with a case manager at the start of each four day block rotation. This ensures that detainees can have timely and regular support by facility staff. Additionally, provincial authorities in BC have taken the decision to centralise the housing of IRPA detainees in one facility in that province, with a dedicated unit.

Although many provincial correctional facilities do not recognise the differences between IRPA detainees and those serving on a criminal hold, the CRCS has observed that some provincial correctional facilities have and are making an effort in understanding the unique needs and circumstances of immigration detainees. The CRCS has observed greater efforts in reducing the co-mingling with general populations such as dedicated immigration detainee wings. For example, BC Corrections in conjunction with the CBSA and the CRCS, has developed standard guidelines for its corrections officers who work with Immigration Detainees. These guidelines are meant to provide officers with best practices in managing immigration detainee populations within the BC provincial correctional facilities.

In Quebec, the CRCS has noted a general increase in CBSA presence at the RDP facility over the reporting period. The increased presence has had a positive impact on detainees as it has led to increased assessments and placement of detainees at more appropriate facilities.

Please see section 13.4 for Recommendations

¹⁴ 2012 UNHCR Detention Guidelines on the Applicable Criteria and Standards relating to the Detention of Asylum Seekers and Alternatives to Detention, Guideline 8 Conditions of detention must be humane and dignified 48-(III), pg., 29.



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7. Immigration Detention in Provincial Correctional and CBSA Facilities

The detention environment between Immigration Holding Centres and Provincial Correctional Facilities are completely different. Generally persons have varying levels of restriction and access to support services.

7.1 Immigration Detention in Provincial Correctional Facilities

The CRCS has observed that persons detained in provincial correctional facilities (PCFs), overall, are detained in a more restrictive environment, receive more restrictive treatment and have less access to many support services than those detained in IHCs. This is because while IHCs are considered minimum to medium security facilities, PCFs have a higher security threshold of medium to maximum security and serve a largely punitive function. Fundamentally, IHCs and PCFs have different institutional outlooks on detention. The CBSA's broad mandate to administer and enforce the IRPA which includes detaining those people who may pose a threat to Canada or removing people who are inadmissible to Canada¹⁵ is different from the PCF's function and mandate to deter, punish, and rehabilitate those detained under the Criminal Code.

The chart below will provides a snap shot of some CRCS observations regarding the marked differences between those detained in provincial correctional facilities and those in federal immigration detention. This is not a comprehensive comparative review but is only meant to highlight some of the discrepancies in service, support and the overall detention environment for individuals in the two types of facilities.

¹⁵ About the CBSA, <http://www.cbsa-asfc.gc.ca/agency-agence/what-quoi-eng.html> , last accessed September 2013.



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Comparative View of Detention in Federal Immigration Holding Centres¹⁶ (IHCs) versus Provincial Correctional Facilities (PCFs)

Issue	IHC	Provincial Correctional	Variance
Conditions-Security Level	Minimum to Medium Only houses persons detained under the Immigration and Refugee Protection Act and/or minors not under a formal detention order but accompanying their parents and guardians.	Medium to Maximum. Can be a remand facility- which is used for the temporary detention of a person while awaiting trial, sentencing or the commencement of a custodial disposition or can also be a facility which houses sentenced offenders.	Correctional facilities have higher security levels than IHCs as they house persons detained under the criminal code and generally contain more security threats. This means that persons in these facilities face a more restrictive environment even though they are under administrative (not criminal) detention. PCFs, especially remand centres, are often overcrowded. The CRCS does not have access to all PCFs where immigration detainees are held. Currently the CRCS only has access to PCFs in British Columbia and Quebec.

¹⁶ Although the BC IHC facility is a Federal Immigration Holding Centre, it is different from the TIHC and CPL, in that it is a short term facility with a maximum detention stay of 72 hours, while the other IHCs have the capacity for long stay detentions. As such, this facility does not provide the same services as the other IHCs.



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Issue	IHC	Provincial Correctional	Variance
Conditions-comingling	Detainees are not co-mingled with persons under the criminal code.	Detainees are co-mingled with general population of offenders, including some who might be gang affiliated, remanded or convicted for violent offences, and persons convicted who also have mental disorders.	Persons in IHCs are in much safer environments while generally persons in PCFs express greater anxiety and fear of harm.
Conditions-CBSA Oversight	CBSA and/or security firms contracted by the CBSA present within the facility.	Presence of a full time Detainee/ Jail Liaison officer only in British Columbia and Ontario.	Detainees at the IHC have more access to CBSA and are able to get more information about their case, immigration processes, support and services.
Legal Guarantees-Access to Legal Services	Both the TIHC and CPL have organizations that visit regularly and are able to provide information, phone cards, and legal support to detainees. At the TIHC comprehensive detention package provided to detainees, however it still does not include basic information on immigration	There are many restrictions on phone use for e.g. In some facilities detainees only have 20 minutes per phone call. Other facilities can charge as high as \$0.75- \$0.90 a call, including local calls.	In general, persons in IHCs have more access to organizations that can provide legal advice, phone cards, and /or information to detainees. Challenges with phone use make it difficult for detainees in PCFs to maintain regular and meaningful contact with their counsel. Overall however, detainees in both IHCs and PCFs may have less opportunity for representation by legal aid



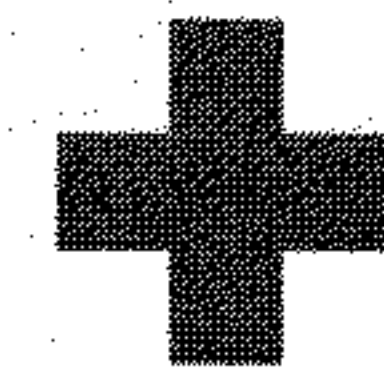
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Issue	IHC	Provincial Correctional	Variance
	procedures and appeal processes. At CPL and the BC IHC standard CBSA brochure is given to detainees but not always consistently. Local NGO agencies are regularly present in IHCs and are able to provide additional information and support to detainees.		offices due to reduction in legal aid services.
Legal Guarantees- Access to information	CBSA officers and local NGOs are present to provide information to detainees. Written information is available; however, such information is still not consistently distributed.	Persons do not consistently receive the basic CBSA brochure. Limited access to CBSA personnel to ensure access to and to review of information about the immigration/detention process.	Overall persons in IHCs have more access to information than persons in PCFs. CBSA and local organizations are consistently present in these facilities to provide information to detainees.
Access to Family- Phone	Free local telephone calls including legal counsel and consulate officials between (8am-10pm). After hours' calls approved at the	Some facilities have time limits on phone use, e.g. only 20 minutes per call. In most PCFs local calls are not free and the rate charged is sometimes a barrier at	In general access to phone is more permissive in IHCs, which gives detainees more opportunity to connect with family and/or work with their counsel and consulate. Persons in PCFs have less



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Issue	IHC	Provincial Correctional	Variance
	discretion of the Director. Access to local phones directory and list of NGOs. Calls from consulate/consulate are relayed in 30 minutes.	\$0.75- \$0.90 a minute in some cases. In some facilities this even includes local calls. In some PCFs detainees are unable to call cell phones and can only call landlines. Automated phone systems are in English which is difficult for non English speaking detainees and their families on the other end of the line; this result in many dropped or lost calls. Some PCFs do not have phone instructions translated in multiple languages.	access to telephone time. This lack of access to freely communicate with family and counsel can have very negative impacts on detainee's well being, general mental health, or on their ability to work on their case with legal counsel or consular services.
Access to Family-Visitation	Can receive 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 Access to Family-Visitation work week.	Varies. Some PCFs are moving to video conferencing which means no in person contact. Even for persons with children or those about to be removed.	Overall rules for visitation in IHCs are more permissive than PCFs.



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7.2 Immigration Detention in the CBSA Facilities

Although detention in provincial correctional facilities has shown to have higher protection concerns, the CRCS has also observed issues with the current IHCs. In particular, the CRCS has concerns with the physical structure of the Centre de Surveillance de l'Immigration. For example, the CRCS has observed traces of mould and mildew, problems with the heating system and a lack of air conditioning. All of these issues can make detention in the facility uncomfortable and may also pose health risks to detainees. The CRCS understands that the CBSA is considering plans to renovate or replace this facility; however no definitive action has been chosen.

The CRCS also has concerns with the holding cells at Pacific Region Inland Enforcement Section (PRIES). This facility provides day use holding cells for detainees who have hearings or reviews scheduled throughout the day. Detainees are transported from other facilities and are held at PRIES from 8:30 am up to 7:00pm. The facility has three small cells with a capacity of up to 8 each and altogether can accommodate 20 persons. The CRCS understands that due to space constraints the CBSA has had to use cells meant for 6 or 8 people, to hold up to 16 people. The CRCS has also observed that when minors or female detainees are present, there is little room to separate detainees which exacerbates the space constraints. Additionally there is very little privacy for using the toilet. The CRCS understands that planned renovations and expansion of this facility have been halted.

Please refer to Section 13.5 for Recommendations.

8. Mental Health in Detention

The CRCS reiterates that the issue of mental health in immigration detention is one of great concern. The CRCS is acutely aware of the compounded vulnerabilities of detainees with pre-existing mental health illnesses and or those who become more susceptible to developing mental health issues while in detention. This risk is also enhanced with prolonged detention.

8.1 Mental Health Services in IHCs

In 2012, the CRCS observed variability with regard to IHC mental health support services available to detainees. For example in the Toronto IHC, counseling services



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were provided on a voluntary basis by a social worker, while a representative of the Salvation Army provided counseling services to Spanish speaking detainees. Persons with mental health needs would be transferred to other facilities for care. The CRCS has understood that in 2013, there will be increased medical capacity at the TIHC which will include the provision of psychiatric services.

In the BC IHC there are no mental health services on hand, instead persons are sent to other facilities to receive care. This determination is made by a CBSA officer. The lack of regular mental health professionals at this facility is a concern particularly for persons who may remain detained in the BC IHC for long periods.

As of March 2013, there were no mental health services available to detainees at CPL; instead detainees are transferred to other facilities for care. The CRCS has understood that a new medical agreement for medical services at the IHC in Laval does provide for increased psychiatric services and that these new services will begin in 2013.

8.2 Mental Health Services in Provincial Correctional Facilities

While correctional facilities have mental health services on hand within the facility, detainees face barriers to understand how to access them, and are at greater risk of developing mental health issues as a result of co-mingling. This is particularly acute in remand facilities where the security is higher and where there is co-mingling at any level with dangerous and violent offenders and also where there is the recurring practice of overcrowding. Remand facilities also offer less recreational opportunities, less ability to connect with family, and less ability to discuss their cases with legal counsel, which can contribute to deteriorating mental health. Long term detention in any facility can negatively impact the mental health of all detainees; however this is especially true for detainees in correctional facilities and short term facilities such as the BC IHC.

8.3 CBSA Notifications - Persons with Mental Health Concerns

The MoU¹⁷ between the CBSA and the CRCS obliges the CBSA to notify the CRCS when a person has been deemed unable to appreciate the nature of the proceedings, following

¹⁷ Section 2.2 of the 2006, CRCS-CBSA MoU states; 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 Section 167 (2) of the IRPA.



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the first detention review by the IRB. To respond to these notifications the CRCS has developed standard operating procedures that guide the response to the specific vulnerabilities associated with these individuals. Generally, when notified of their detention, the CRCSs will gather the necessary information from the CBSA to determine whether all the relevant and appropriate support agencies and organizations are aware of the individual. In addition, this assessment also determines whether the CRCS must go into the facility for a visit.

Currently in some regions, the CRCS receives these notifications very infrequently and in others, not all. The CRCS is encouraging the CBSA to work with the CRCS regional offices towards developing a notification process to ensure that all persons who may be deemed unable to appreciate the IRB proceedings have their best interests protected.

8.4 Designated Representatives

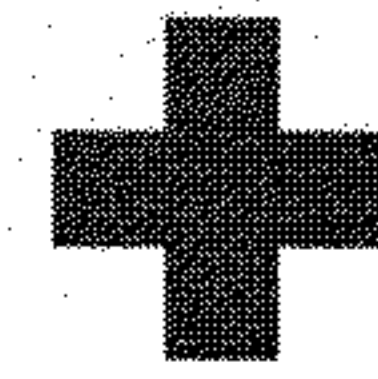
If in the opinion of the IRB a detainee is deemed to be unable to appreciate the nature of the proceedings at the 48, 7 and 30 day detention review, a Designated Representative (DR) may be assigned the individual. The CBSA should also be cognizant however that, as a result of their detention, persons may experience deteriorating mental health in between IRB proceedings. In many cases may benefit from the assistance of a DR in navigating the detention process as well as the IRB proceedings.

Please refer to section 13.6 for Recommendations.

9. Access to Family Contact

In the 2011 annual report, the CRCS highlighted that immigration detainees often face barriers to maintaining family contact while in detention¹⁸. In the 2012-2013 monitoring period, the CRCS observed that these barriers to family contact persisted, particularly in provincial correctional facilities in British Columbia, and Alberta.

¹⁸ The right to access and to maintain family contact for detained persons is protected within the *Body of Principles for the Protection of All Persons Under Any Form of Detention or Imprisonment* "A detained or imprisoned person shall have the right to be visited by and to correspond with, in particular, members of his family."



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9.1 Use of Phones

In British Columbia and Alberta, the CRCS has observed that accessing the phone system and its automated options are problematic for those who do not speak English. Further, it is also prohibitive for those family members on the receiving end of the call who also cannot speak English and therefore do not choose the right options. As a result, many calls do not go through. The CBSA Pacific region has allowed detainees' access to contacting family overseas through their offices, facilitated through the CBSA liaison officer. The CRCS continues to engage the CBSA Prairies and Alberta provincial correctional authorities to also address this gap within the facility.

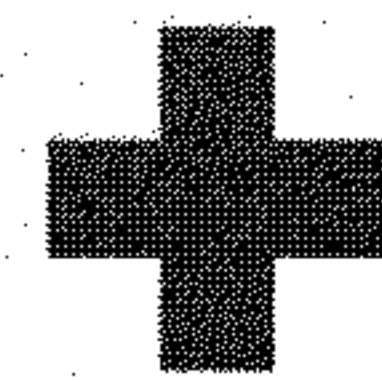
9.2 Video Conferencing

The CRCS is also that concerned that the move toward the use of video conferencing as the sole means to maintain family contact in facilities in Alberta (Edmonton) and potentially in British Columbia (currently this is being piloted at the Surrey Pre-trial Services Centre (SPSC), and is planned for all BC Corrections facilities) may negatively impact family contact. This replacement of visits by video conferencing is a particular concern for those facing imminent removal from Canada who have family members (including children). 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 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, particular 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), encourage 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 week¹⁹.

Please refer to Section 13.7 for Recommendations.

¹⁹ The CBSA National Standards and Monitoring Plan for the Regulation & Operation of CBSA Detention Centres, 7 Administrative.



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10. Use of Restraints

CRCS has repeatedly raised the concern that detainees held in correctional and some federal facilities are often subjected to a blanket restraint policy meaning that all persons, including those deemed vulnerable, are restrained including during transportation from places of detention to medical appointments and hearings. In addition, persons are restrained while being examined by medical professionals. In Quebec, the CRCS has understood that the medical personnel at the hospitals are uncomfortable treating patients who are restrained and have in some cases, even requested that they be removed during an examination. CRCS understands that the security companies contracted to transport detainees are not authorized to remove restraints even at the request of medical professionals.

Please refer to Section 13.8 for Recommendations.

11. Designated Foreign Nationals

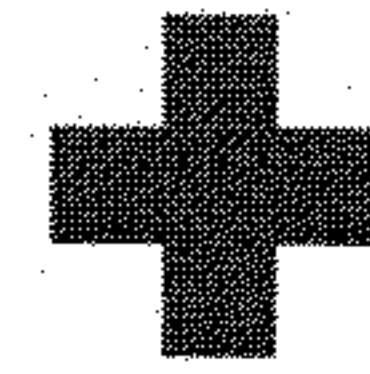
On December 5, 2012, the Minister for Public Safety (Public Safety Canada) designated five groups of foreign nationals (DFN)²⁰ who crossed the Canada – U.S. border as irregular arrivals. This was the first time the designation had been enacted by the Minister since the passage of the Protecting Canada's Immigration Systems Act (PCISA), Short title, Bill C-31: which enacted the new designation provision. Designated Foreign Nationals are of interest to the CRCS because:

1. Their detention falls under the regular monitoring mandate of the CRCS as agreed within the 2006 MoU between the CBSA and the CRCS.
2. The mandatory detention of persons including vulnerable groups such as minors 16 and 17 years old and families with minors, represent potential protection

²⁰ Under the Immigration and Refugee Protection Act (June 2012), the Minister of Public Safety Canada can designate members of a group who arrive in Canada, as part of an irregular arrival as "Designated Foreign Nationals" (DFN). The Minister can make this designation if he or she is of the opinion that;

- The investigation of the group or establishing their identity cannot be done in a timely manner; or
- There are grounds to suspect there has been human smuggling for the benefit of a criminal organization or terrorist group.

A foreign national who is part of a group deemed as an "irregular arrival by the Minister, automatically becomes a DFN unless he or she holds the appropriate documents to enter Canada and is considered admissible to Canada. DFNs are subject to a different detention regime and restrictions on immigration applications than other foreign nationals. This legislation is retroactive to 31 March 2009.



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concerns given the CRCS' position that the detention of minors be done only as a last resort.

3. The potential implications of mandatory and lengthy detention on the wellbeing of individuals in detention.
4. The potential for co-mingling of persons who are designated foreign nationals, in the event of a mass arrival or detention of a large group of persons who become designated; particularly at Ports of Entry where no IHCs exist.

11.1 CRCS Notification of Designations

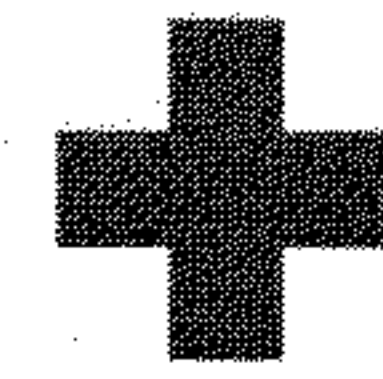
The CRCS learned of the designations and subsequent detention of DFNs through the media and responded quickly by carrying out monitoring visits. To facilitate a more timely and planned response in the event of future detentions of persons designated, the CRCS National Office (NO) requested to be notified. The CBSA agreed to notify both the CRCS National Office and also have their regions notify the relevant the CRCS regional offices. Additionally, both CBSA and CRCS have agreed that their regional offices will work together to develop a regionally specific notification process.

11.2 CRCS Response to the Designation

The CRCS carried out regular monitoring visits (see section 1.2 for more information on the detention monitoring methodology and process) at the location where the DFNs were held. The CRCS observed that the detainees did not raise any serious concerns to the CRCS about their conditions of or treatment in detention at the time of the CRCS visit. In addition all detainees indicated that they had access to legal services and had received letters with information detailing their detention and access to counsel.

At the TIHC, measures were taken to keep families together. In the TIHC, a separate wing was opened to accommodate mothers and children. Fathers were not held together with their family units. Again, this highlights the issue that currently in all detention facilities; the CBSA is unable to keep entire families together.

Please refer to Section 13.9 for Recommendations.



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12. Alternatives to Detention

Many of the protection concerns highlighted above could be ameliorated through the use of appropriate alternatives to detention by the CBSA.

The CRCS understands alternatives to detention to mean any of a range of policies and practices that states use to manage the migration process, which fall short of detention, but typically involve some restrictions²¹.

Globally, there have been marked interest and moves towards the use of alternatives to detention. Many states have opted for the implementation of alternatives to detention to avoid the detention of vulnerable groups such as minors and families, refugee claimants, pregnant women and persons with physical and mental health concerns.

In 2012, UNHCR updated their global *Detention Guidelines*²². The revised Guidelines reflect the current state of international law relating to detention of asylum seekers and provide governments with clear guidelines on the elaboration and implementation of asylum and migration policies. Notably the guidelines include the importance of the need for states to strongly consider the use of alternatives to detention.

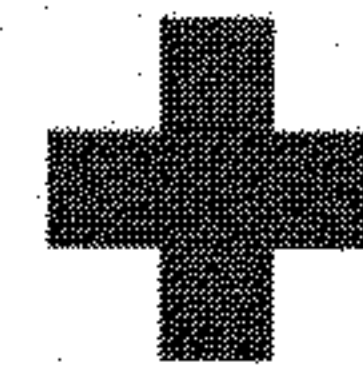
12.1 Alternatives to Detention Practices in Canada

Canadian immigration legislation and regulations stipulate that 'alternatives to detention' must be explored both before a decision to detain is made and also at subsequent detention reviews (48hrs, /7days/30days).²³ Currently, what is most commonly used for conditions of release may include depositing a sum of money (often \$2,000 to \$5,000 through a bail/bond system) or signing an agreement guaranteeing a specified amount (a guarantee of compliance) together with or separately from other 'performance conditions' such as reporting, registering one's address, appearance at immigration proceedings. A third party can also post bail in these circumstances.

²¹ "Building Empirical Research into Alternatives to Detention: Perceptions of Asylum-Seekers and Refugees in Toronto and Geneva", UNHCR, page 10

²² UN High Commissioner for Refugees, *Guidelines on the Applicable Criteria and Standards relating to the Detention of Asylum-Seekers and Alternatives to Detention*, 2012, available at: <http://www.refworld.org/docid/503489533b8.html> [accessed 13 August 2013]

²³ Immigration and Refugee Protection Act, RSC 2001 c 27, s. 57, 58.1 : release on bail, bond or surety/guarantor; Immigration and Refugee Protection Regulations, SOR/2002-227, r.248: alternatives to detention must be considered before a decision is made on detention



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The Toronto Bail Programme (TBP) provides access to the bail/bond system to those who do not have access funds and who would not be able to access the programme otherwise. No money is paid over to the authorities – instead the TBP acts as the bondspersons for particular individuals. The TBP then provides case management support to the individual. There are reporting obligations imposed on the asylum seeker or rejected asylum seeker.

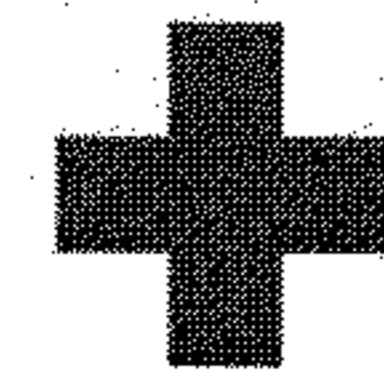
In effect, the outcome of the detention review is that detainees are released to the TBP. It is a more systematic and professional bail program, as compared to other ad hoc community models in Canada, where diaspora groups may post bail or offer their names as guarantors for particular individuals. The success rate of the program is high, with only a 3.65 % rate of persons who have absconded. The TBP however is only used in Toronto, Ontario. Other provinces may use other alternatives to detention however it is neither standard policy nor standard practice.

12.2 CRCS Activities in Alternatives to Detention

The CRCS has, in the past, participated in initiatives to encourage the exploration of more alternatives to detention models in Canada. In 2006, the Society co-hosted with UNHCR, a series of national and regional roundtables with government officials and NGOs to discuss this topic. In 2012, the Canadian Red Cross participated in a bi-national roundtable hosted by UNHCR with senior government officials from Canada and the United States in Buffalo, NY USA. This roundtable was one of several regional forums following a global roundtable on alternatives to detention held in Geneva, earlier in 2012. These meetings followed a recently released international study by UNHCR on alternatives to detention²⁴ and the launch of the revised UNHCR Detention Guidelines. The aim of the roundtable was to generate greater interest in alternatives to detention programs in Canada and the United States of America and to stimulate discussion and exchange of best practices. Specifically the conference highlighted:

- That refugee claimants and migrants should be treated with dignity, humanity and respect throughout the immigration process and that any detention or

²⁴ 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



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alternatives to detention decision must be governed by the principles of necessity and proportionality,

- The importance of case management, access to information, legal advice and shelter as necessary and complementary to any alternatives to detention model.
- In Canada, several NGOs provide services that complement alternatives to detention models and should be supported and leveraged by the Canadian Government as it works to further define and develop a strategy for alternatives to detention.

The CRCS will continue to build on this and all of the previous efforts, in order to continue to highlight and encourage the use of alternatives to detention in the Canadian immigration context.

Please refer to Section 13.10 for Recommendations.

13. CRCS Recommendations to the CBSA

The CRCS makes the following recommendations to the CBSA in response to the protection concerns identified in the report.

13.1 Access to Immigration Detainees

- 13.1.1 The CBSA should continue to work with its provincial partners to establish and/or maintain the independent monitoring of all persons held under IRPA (in provincial correctional facilities in Ontario and across Canada) either by the CRCS or any other appropriate agency.

13.2 Legal Guarantees

- 13.2.1 The CBSA must provide information to detainees that is comprehensive and contains information on; their rights, specific information about their detention, the facility and available support services and basic information on immigration and appeal processes. The CBSA should work with local legal aid and



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immigration support agencies to provide locally appropriate and contextualized information on how to access these services.

13.2.2 The CRCS is encouraged that the CBSA has revised the *Information for People Detained under the Immigration and Refugee Protection Act* brochure to reflect some of the new legislative and policy changes. The CRCS is also encouraged that the CBSA has translated the document into 16 languages with plans to distribute the brochure widely. The CRCS encourages the CBSA to not delay its distribution. Providing detainees with critical and updated information about their detention should be the highest priority. The CRCS also encourages the CBSA to establish clear guidelines around the distribution of this material including who is responsible for ensuring each detainee, regardless of which detention facility they are held in, has access to this material at all times during their detention.

13.3 *Minors in Detention*

13.3.1 The CBSA must 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.

13.3.2 The CBSA has an obligation to consider alternatives to detention for all minors. Deprivation of a minor's liberty must only be used as a measure of last resort and for the shortest appropriate period of time. The CBSA must ensure that all provinces have available alternatives to detention for minors and families with minors. Family separation should not occur due to a lack of capacity to appropriately accommodate a minor and/or a family.

13.3.3 The CRCS reiterates that the CBSA should implement a national minor policy and operating procedures governing the 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 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 take into



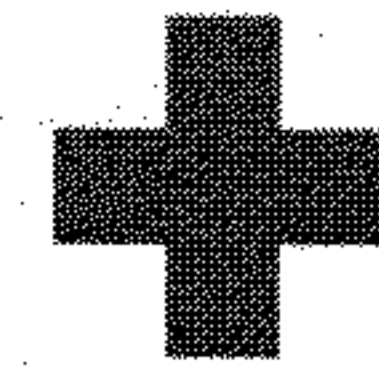
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consideration alternatives to detention, all new legislation and reflect the highest protection afforded to minors within both domestic and international standards.

- 13.3.4 The CRCS encourages the CBSA to work with the IRB to expand the role of the Designated Representatives beyond the IRB processes. Specifically, this role should include the involvement of the DR from the first point of detention of the unaccompanied minor and throughout their detention continuum, until release. This will ensure that there is someone who can represent the best interests of a minor at all times. The CBSA should work with community partners such as child protection ministries, local NGOs and law firms to establish ways to ensure there are no gaps in protections for unaccompanied minors.

13.4 Co-mingling

- 13.4.1 All immigration detainees must be held in conditions that meet the minimum standards outlined in the CBSA NSMP Guidelines. CBSA retains the legal obligation to care for all immigration detainees and therefore should actively ensure that all minimum standards are applied, regardless of the place of detention.
- 13.4.2 Until such time that all immigration detainees can be provided with an opportunity for an alternatives to detention, or at the very least, housed in CBSA operated facilities and under CBSA guidelines, the CRCS recommends that the CBSA place immigration detainees in those facilities that are best suited to them and not place them in facilities where they are co-mingled with criminal populations.
- 13.4.3 The CRCS recommends that the CBSA appropriately monitors provincial correctional facilities to ensure detainees are held according to the CBSA standards. To ensure the guidelines are properly followed, the CRCS recommends that the CBSA's oversight be expanded in all correctional facilities housing immigration detainees and that CRCS or another independent body gains access to such facilities to carry out mandated monitoring duties. For



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example the Detainee/Jail Liaison Officer (DLO/JLO) role, such as the one present in Ontario and now British Columbia, should be pursued in all geographic areas where immigration detainees are held in correctional facilities.

13.4.4 The CBSA should take the positive example of the ACCW, where facility management have assigned a case manager to IRPA detainees. Assigning a case manager to IRPA detainees ensures detainees receive timely and regular support by facility staff. The CRCS encourages the CBSA to work with various provincial authorities to establish a similar system in other facilities. As noted above, the CBSA Detainee/Jail Liaison officer position should also be available to all regions, in addition to the corrections officer case manager. This will ensure that detainees receive support from both CBSA and corrections staff. More importantly, this ensures that the CBSA maintains strong oversight over persons under their authority. Overall, the presence of a CBSA DLO/JLO and a corrections officer case manager would assist in mitigating some of the negative and persisting protection issues that come with detention in a correctional facility, such as restrictive access to telephones, personal and family visits and access to legal counsel.

13.4.5 In correctional facilities, immigration detainees should be 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 on an immigration detainee's access to appropriate cultural, educational, and physical activities to which they are entitled. Separation should, at minimum, be at the cell level. Overall, the CBSA must continue to work with provincial corrections to develop a long-term strategy to eliminate the practice of comingling.

13.5 Immigration Detention in Provincial Correctional and CBSA Facilities

13.5.1 The CBSA retains full and ultimate legal responsibility for persons detained pursuant to the IRPA. As such, the CBSA must ensure that all immigration detainees enjoy similar rights and support services and are not subjected to



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variable detention conditions as a result of their place of detention capacity constraints.

- 13.5.2 The CRCS encourages the CBSA to conduct regular reviews of its facilities and day-use holding cells to ensure that they meet health and safety standards and conform to the requirements outlined in the CBSA National Standards and Monitoring Plan (NSMP) as well as any national applicable and regulations. The CRCS also encourages the CBSA to not delay and/or consider facility renovations/expansion plans that can ensure that detainees are held in environments that do not place undue risk to their mental and physical health.

13.6 Mental Health in Detention

- 13.6.1 The CBSA must 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.
- 13.6.2 Detainees in both IHCs and provincial correctional facilities are at an increased risk of developing or exacerbating mental health issues, particularly persons who have experienced trauma and those on long-term detention hold by the virtue of the deprivation of their liberty. Therefore the CRCS encourages the CBSA to explore alternatives to detention to reduce the number of persons detained and the length of time they spend in detention, particularly for vulnerable groups such as minors, families, refugee claimants and persons who require greater physical and mental support.
- 13.6.3 The CRCS encourages the CBSA to work with the CRCS regional offices towards developing a notification process that allows the CRCS to respond to all persons who may be deemed unable to appreciate the IRB proceedings.
- 13.6.4 The CBSA should be cognizant that while in detention a person's mental health may deteriorate in between IRB proceedings and as such should work with the IRB to ensure that there is a mechanism to assess and respond to persons who may need the support of a DR in between IRB proceedings.



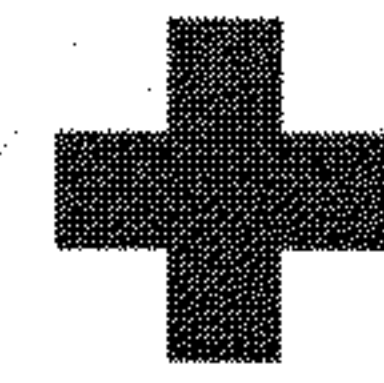
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13.7 Access to Family Contact

- 13.7.1 The CBSA must ensure that all detainees, in both immigration holding centres and correctional facilities, are given adequate opportunity to communicate with family overseas or in Canada.
- 13.7.2 The CBSA must 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 CRCS also encourages the CBSA, where possible, to assist detainees who cannot afford to call families.
- 13.7.3 Video conferencing should remain an option for immigration detainees who have families who cannot visit them in person. Video conferencing, however, should not be the sole means by which detainees have contact with family in particular persons who have children and persons who are about to be removed. The CBSA should ensure that all persons under their detention authority have equal opportunity to have family contact in person and through video as stipulated in CBSA NSMP.
- 13.7.4 The CBSA must ensure that those awaiting removal are provided with timely and open access to in-person family visits.

13.8 Use of Restraints

- 13.8.1 In IHCs, the CRCS encourages the CBSA to perform individual assessments in order to determine the need whether the need for restrictive measures during transportation, medical appointments and hearings is absolutely necessary.
- 13.8.2 For those detainees' transferred/in provincial facilities, the CRCS encourages the CBSA to increase sharing of necessary information with correctional staff, to assist in appropriately evaluating detainees' level of risk. This would lead to



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restrictive measures being used only after an evaluation has indicated it is necessary and would overall reduce the application of restrictive measures used on immigration detainees.

13.9 Designated Foreign Nationals

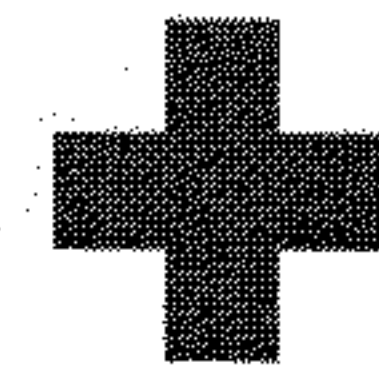
13.9.1 The CRCS encourages the CBSA to make all written information for DFNs available in multiple languages to ensure that DFNs fully understand their specific circumstances.

13.9.2 A consequence of becoming a DFN is the mandatory and prolonged detention without review (up to 14 days). Minors 16 and 17 years old are also subject to this legislation. The CRCS recommends that the CBSA ensures that procedures are put in place to reduce the potential impact of mandatory and prolonged detention on all persons who could be considered vulnerable, including unaccompanied minors, separated minors, families with minors, refugee claimants, pregnant women and persons who require additional physical and mental support.

13.10 Alternatives to Detention

13.10.1 The CRCS encourages the CBSA to consider and actively pursue a national strategy for alternatives to detention to ensure wide availability and consistent application across the country.

13.10.2 The CRCS recommends that the CBSA ensures that alternatives to detention are available in all provinces and should be considered in all cases as part of the decision on to detain a person. In addition, alternatives to detention should be a primary consideration in cases where persons are most vulnerable, such as unaccompanied minors, families with minors, refugee claimants, pregnant women and persons requiring physical and mental support.



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14. Conclusion

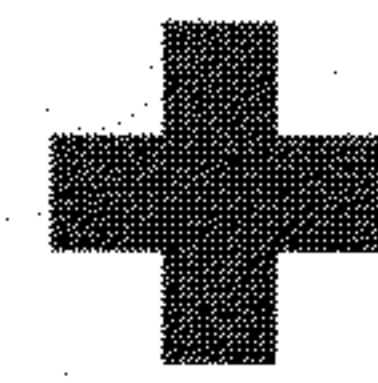
2012 saw significant changes to the legislative framework of immigration detention. The CRCS recognizes that the CBSA will need to adapt its policies in order to respond to these changes. The CRCS encourages the CBSA to take all necessary considerations to ensure that all individuals in immigration detention, including the most vulnerable, are able to maintain full access to due process. This consideration should also include an assessment of the implementation of alternatives to detention nationally.

The CRCS commends the CBSA for positive changes in the 2012-2013 period at the facility and regional level. For example at the facility level, the CRCS noted that at the Centre de Surveillance de l'Immigration, accommodations were made for religious practices including offering religious services in several languages such as French, English, Italian and Spanish. Regionally, the CRCS noted that the CBSA Pacific has now made it possible for detainees in provincial correctional facilities to communicate with family overseas by facilitating long distance phone calls. Detainees alert the detainee liaison officer (DLO) of their need; the DLO then assists the detainee in making the call at the CBSA office.

The CRCS also appreciates the efforts some correctional facilities have made in improving the detention environment for detainees. For example, the CRCS commends the assignment of case managers to immigration detainees within the ACCW correctional facility. This ensured that the needs of immigration detainees were being addressed and managed by facility staff in a timely manner.

There are however protection issues identified in the 2012-2013 period which remain a concern to the CRCS and which have been highlighted in this report. The CRCS continues to encourage the CBSA to work diligently to improve the detention environment for all persons detained pursuant to IRPA.

The CRCS enjoys an open relationship with the CBSA, and welcomes further dialogue on these issues. The CRCS looks forward to discussing the recommendations and follow-up from the present report at a meeting with the Vice-President Enforcement and the Vice-President Operations. The CRCS sees an opportunity to advance the discussion on alternatives to detention. The CRCS invites the CBSA to continue to dialogue with all relevant stakeholders and actively search for appropriate alternatives to detention for Canada. The CRCS is confident that both organizations will continue to



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work toward the common goal of ensuring immigration detainees are treated with dignity and respect and in compliance with all applicable standards.



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

2011

CONFIDENTIAL



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List of Abbreviations

ACCW	Alouette Correctional Centre for Women
BYCSC	Burnaby Youth Custody Services Centre
CBSA	Canada Border Services Agency
CPI	Centre de prévention de l'immigration de Laval
CRC	Calgary Remand Centre
CRCS	Canadian Red Cross Society
DMP	Detention Monitoring Program
ERC	Edmonton Remand Centre
FRCC	Fraser Regional Correctional Centre
ICCPR	International Covenant on Civil and Political Rights
ICRC	International Committee of the Red Cross
IHC	Immigration Holding Centre
IRPA	Immigration and Refugee Protection Act
IRPR	Immigration and Refugee Protection Regulations
MOU	Memorandum of Understanding
NFPC	North Fraser Pre-trial Centre
NSMP	National Standards and Monitoring Plan for the Regulation & Operation of CBSA Detention Centre
RDP	Centre de détention de Rivière des Prairies
RFL	Restoring Family Links
SPSC	Surrey Pre-trial Services Centre
UNCRC	United Nations Convention on the Rights of the Child
UNHCR	United Nations High Commissioner for Refugees



1 INTRODUCTION

The Canadian Red Cross Society (CRCS) is a neutral, independent humanitarian organization. The mission of the CRCS is to improve the lives of vulnerable people by mobilizing the power of humanity in Canada and around the world.

The 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 CRCS monitor the treatment and conditions of immigration detainees in detention facilities.

On the 3rd November 2006, the Canada Border Services Agency (CBSA) entered into a Memorandum of Understanding (MOU) with the CRCS. The MOU mandates the CRCS to monitor the conditions of persons detained under the Immigration and Refugee Protection Act (IRPA). Article 3.1 of the MOU provides that the CRCS "...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 CRCS is hereby submitting the 2011 DMP Annual Report. This report summarizes detention monitoring activities in 2011, identifies discrepancies between the CBSA's detention practices and standards and provides recommendations where appropriate to the Vice-President, Programs and the Vice-President, Operations, of the CBSA.

Key sections include:

- a brief presentation of the CRCS detention monitoring program mandate and work methodology;
- an overview of the CRCS monitoring activities in 2011;
- a summary of protection concerns; and
- recommendations to the CBSA

1.1 The CRCS Detention Monitoring Program

The DMP program provides independent monitoring of detention facilities to promote a protective environment that recognises the rights of immigration detainees as set out in international and domestic standards and laws. This work is carried out in accordance with the MOU between the CBSA and the CRCS which is supported by the *Canadian Red Cross Detention Monitoring Guidelines* (hereinafter the DMP Guidelines). These guidelines include the agreed minimum service delivery and care standards supporting persons detained pursuant to the IRPA.



1.1.1 The CRCS Detention Program Monitoring Team

The DMP Program is implemented through the DMP team, at the national and regional levels and is comprised of qualified staff members and detention monitoring volunteers. As volunteers, they must undergo professional (reliant on at least two or three references) and criminal reference checks. Candidates that are successful in the initial selection process must also submit an application for a vulnerability sector criminal record check. Only then do candidates become DMP volunteers. Volunteers must then submit an updated Criminal Record Check every three years. To ensure all volunteers have the appropriate knowledge and skills to carry out responsibilities, each volunteer must also successfully complete the mandatory training program. New team members are mentored in their work by seasoned monitors to ensure that the high quality of service provided by the CRCS is maintained.

Given the sensitive nature of conducting interviews, the CRCS recognises the importance of a gender balance in each team to better ensure a detainee is comfortable to speak in confidence about their personal situation. When needed, teams are accompanied by a health volunteer with a medical or nursing background as well as volunteers trained to provide Restoring Family Links (RFL) services. The CRCS 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 CRCS 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.

1.1.2 The Work of the CRCS Detention Monitoring Program

Pursuant to the MOU, the CRCS monitoring work focuses on four areas:

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



Where the CRCS 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 CRCS' monitoring work generally focuses on systematic issues rather than individual cases. This involves understanding the policies, standard operating procedures and mechanisms in which a facility operates, including how staff is trained and how services are provided to the detainees. This approach ensures that systemwide recommendations benefit all current and future detainees. However, where appropriate, the CRCS will raise issues brought forward by detainees during interviews with the express consent of the detainees.

Within the parameters of CRCS 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 CRCS 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.

1.2 Detention Monitoring Visit - Methodology and Reporting Process

The CRCS endeavours to conduct a minimum of four monitoring visits per year to each Immigration Holding Centre (IHC) and non-CBSA facilities to which the CRCS has access. The CRCS may choose to visit a facility less than four times per year if the detainees are typically held on an infrequent basis. The CRCS monitoring procedures call for detention visits to be supported by regional meetings with CBSA. These meetings are an opportunity to share key findings, including detention conditions and the treatment of detainees, as well as to define future actions to strengthen the quality of services and care provided. Additionally, CRCS staff from British Columbia and Alberta meets with provincial corrections authorities annually.

To guide the work of the CRCS, program standards and a monitoring framework were developed and are modeled after the procedures of the ICRC. An outline of a CRCS detention monitoring visit is as follows:

- A monitoring visit begins with a meeting with the CRCS and the facility director or his/her designate, followed by a short explanation of the CRCS mandate in the facility, as well as a follow-up on items from previous visits.
- The facility representative then provides a general update on the facility's population and conditions, including demographic information on the detainees, such as the number of detainees by gender and nationality.



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- The visiting CRCS team will also ask specific questions to identify particularly vulnerable detained persons. Facility representatives are asked about detention conditions, trends or any overall changes in the population or incidents within the facility.
- The CRCS team meets with the detainees. The CRCS representatives will typically present their mandate to a group of detainees, distribute a sheet that explains the CRCS mandate in various languages and invite detainees to speak with team representatives if they wish. Sometimes, detainees share issues in a group setting while others request a private interview. The CRCS team members will take note of any issues and/or concerns raised during the interviews.
- After concluding the confidential interviews with detainees, the CRCS 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: outline general observations regarding conditions at the facility; indicate what is working well, and what is not; with prior consent of the detainee, address areas of specific concern to individual detainees; recommend actions and agree on a timeframe with facility representatives to deal with areas of concern. The CRCS normally concludes the visit after the debriefing.
- Internal and confidential Red Cross site visit reports are then prepared to highlight and monitor any trends in protection concerns. 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 staff will be referred to the CRCS detention monitoring national manager who will determine the appropriate follow-up
- An annual written report to the CBSA, as mandated by the MOU, is provided.

1.3 Overview of the CRCS Monitoring Activity in 2011

In 2011, immigration detainees were held in various facilities across Canada. This includes the three active federal IHCs operated by the CBSA: the British Columbia Immigration Holding Centre at Vancouver International Airport, Quebec's Centre de prévention de l'immigration de Laval and the Toronto Immigration Holding Centre. Persons were also held in short-term CBSA detention facilities and detention facilities under the control and management of other federal and/or provincial authorities in British Columbia, Alberta, Quebec, Ontario, Nova Scotia, Newfoundland and Labrador, New Brunswick, Manitoba, Saskatchewan and the Yukon.



1.3.1 Detention Monitoring Visits in 2011

In 2011 the CRCS made a total of 36 detention monitoring visits as follows:

Province	Facility	Number of times visited
Alberta	Calgary Remand Centre	4
	Edmonton Remand Centre	4
British Columbia	Alouette Correctional Centre for Women	1
	British Columbia Immigration Holding Centre	3
	Burnaby Youth Custody Services Centre	1
	Fraser Regional Correctional Centre	5
	North Fraser Pre-Trial Centre	3
	Surrey Pre-trial Services Centre	3
	Holding cells at Pacific Region Enforcement Centre	1
Ontario	Toronto Immigration Holding Centre	5
Québec	Centre de prévention de l'immigration de Laval	6

2 PROTECTION ISSUES

The CRCS has identified key concerns during monitoring activities in 2011. These concerns represent non-compliance issues with regard to both national and international standards. These concerns include:

- CRCS access to correctional facilities;
- Legal guarantees;
- Minors in detention;
- Co-mingling;
- Mental health in detention;
- Access to family contact;
- Use of restraints and;
- New legislation and the impact on the CRCS DMP service delivery.

Due to the multiplicity of similar issues affecting immigration detainees across provinces, and across IHCs and correctional facilities, this report has integrated and combined province and facility specific information under the larger related sections. This was done to avoid repetition of information. This is a departure from the 2010 report where provincial issues were treated to their own sections.



2.1 Access to provincial correctional facilities

The CRCS remains concerned at the lack of CRCS access to correctional facilities in Ontario. Article 2.1.2 of the MOU between the CBSA and the CRCS provides that "The CBSA will endeavour, to the fullest extent possible and subject to any lawful limitations, to enable the Red Cross access to persons detained pursuant to IRPA at detention facilities under the control and management of other Federal, Provincial, Territorial or Municipal authorities;". Currently the CRCS only has access to immigration detainees in the CBSA operated federal immigration holding centres and provincial and municipal correctional facilities in Alberta, British Columbia and the Rivière-des-Prairies (RDP) facility in Quebec. Lack of access to Ontario correctional facilities is of great concern given that in 2011, 4,087 detainees¹ were housed in these facilities accounting for approximately 40% of all detained persons in Ontario. This lack of access has been raised by the CRCS with CBSA since 2005. Lack of access directly impacts the CRCS' ability to carry out its role as an independent monitor, which in turn, weakens the CBSA's ability to confirm compliance to international and national human rights and legal standards.

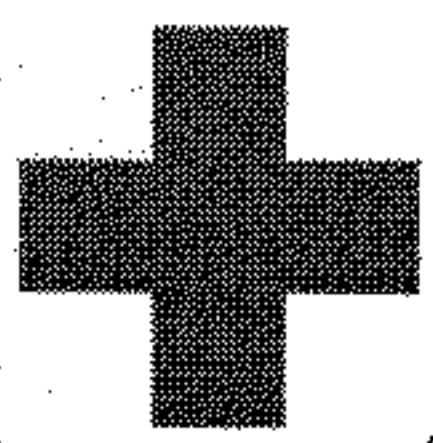
The CRCS recognises that the CBSA is currently negotiating a contract with the Ministry of Community Safety and Correctional Services and commends them on their current efforts to provide the CRCS with access to monitor persons detained under IRPA.

Please refer to the Recommendations section of the report at section 4.1, Pg. 15

2.2 Legal guarantees

Commensurate to the Section 4.3.3 of the MOU, the CRCS monitors detainees' legal guarantees, including access to counsel. The legal rights of immigration detainees are conferred under the Charter of Rights and Freedoms. Pursuant to the Charter of Rights and Freedoms Section 9, everyone [in Canada] has the right to not be arbitrarily detained. Further to that, the Charter also provides in Section 10, that everyone has the right, on arrest or detention, to retain and instruct counsel without delay and to be informed of that right. In 2011 the CRCS observed that immigration detainees, in both IHCs and correctional facilities, experience various challenges with legal guarantees including access to counsel, which can have a negative impact on detainees.

¹ NCMS Detention Activity Cube with statistics on persons detainees disaggregated by Province for, facility, location, gender and age range for 2010 and 2011- As agreed during the May 8th 2012 quarterly meeting (CRCS-CBSA), the CBSA is working to improve technical challenges in their data collection and will be providing the CRCS with accurate data in the coming weeks.



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2.2.1 Information on legal processes and access to counsel

As noted in the 2010 annual report and in CRCS 2011 site visit reports, detainees reported having difficulty fully understanding the legal process surrounding their detention, their immigration case, as well as their options for access to counsel. This is a recurring issue, acutely felt in IHCs and correctional facilities in Quebec, British Columbia and Alberta.

A contributing factor to this may be the variability in the amount of written information that is provided to immigration detainees and the consistency with which it is provided to them. The CBSA has a general brochure, *Information for People Detained under the Immigration and Refugee Protection Act*, which contains basic information on IRPA, policy of treatment, detainees' rights and general information about the detention facility.² However, the CRCS found that IHCs and correctional facilities in British Columbia, Alberta and Quebec did not consistently provide this brochure or similar information. Additionally, it is only available in English and French which means that detainees in all facilities who speak neither language receive less information to inform their legal process.

The CRCS notes that the CBSA is in the process of revising this brochure and is expected to have it translated into different languages. The CRCS is encouraged that the CBSA plans to start distribution of this brochure in 2012. The CRCS is also encouraged that CBSA Prairies and Pacific regions, in collaboration with the CRCS, plan to develop a one-page document outlining the legal processes and information on available legal services in the provinces. Due to pending legislation change, this initiative has been halted in order to provide the most accurate information to detainees.

2.2.2 Access to counsel

The CRCS has noted that access to counsel remains a challenge for many immigration detainees. This challenge is compounded by provincial changes to legal aid programs. These changes have reduced the range of services offered for immigration cases. The CRCS recognises that, while the provision of legal aid is not under the control of the CBSA, there are opportunities to collaborate with legal aid offices across the country to produce updated and regionally appropriate information to detainees. This would provide detainees with information on the availability of legal aid in the region where they are held, as well as the process for accessing legal aid services. This information would better ensure that persons are aware of all means available to them to retain counsel and that the CBSA has performed due diligence in facilitating detainees' rights to retain and instruct counsel.

The CRCS noted that in the first quarter of 2011, detainees at the British Columbia IHC reported difficulty in accessing counsel by phone. The CRCS communicated this concern to the CBSA and, in September 2011, was encouraged to learn that the CBSA had installed a dedicated lawyer phone line at this facility. This allows for lawyers to call and fax information directly to clients.

² In the Toronto IHC, detainees receive a similar brochure, *Toronto Immigration Holding Centre Information Package*, with facility-specific details and basic information on IRPA, policy of treatment and a detainee's rights.



The CRCS will continue to monitor its use to ensure detainees benefit from this new line and can access it with ease.

Please refer to the Recommendations section of the report at section 4.2, pg. 15.

2.3 Minors in detention

The rights of minors³ who are deprived of their liberty are set forth in various international standards and legislation such as the *United Nations Convention on the Rights of the Child*, *United Nations Body of Principles for the Protection of All Persons under any form of Detention or Imprisonment* (United Nations, 1988), the *United Nations Basic Principles for the Treatment of Prisoners* (United Nations, 1991), and the *United Nations Standard Minimum Rules for the Treatment of Prisoners* (United Nations, 1955). In general, domestic legislation and standards governing minors in Canada integrate the requirements of international standards and law. Domestic legislation applicable to minors include the *Canadian Charter of Rights and Freedoms* (Government of Canada, 1982), the *IRPA* and its regulations (Government of Canada, 2002b), and the *Youth Criminal Justice Act* (Government of Canada, 2002c) as well as provincial child protection legislation.

In 2011, Canada detained an estimated 299 minors under the IRPA (151 girls and 148 boys) for an average of 6.1 days.⁴ Of the detained minors, 293 were held at the CBSA run IHCs in Laval, Quebec and Toronto. The remaining six were held in various youth centres in Manitoba and Ontario.⁵ Both unaccompanied and accompanied minors (including Canadian citizens accompanying non-Canadian parents) were held in detention, either formally (as part of a detention order) or *de facto* (accompanying their parent or guardian and not formally part of a detention order).

The Canadian Red Cross considers any minor in detention, regardless of their status, to be a person of concern. This is because minors in immigration detention are vulnerable to impaired development (cognitive, physical, emotional and social) by virtue of their deprivation of liberty, and the conditions under which they are detained. In the 2010 annual report, the CRCS presented key findings from an internal study on the scope and impact of detention of minors. The CRCS is taking the opportunity to reiterate the findings in this report that remain a concern. As stated in the 2010 report:

³ For the remainder of the report, minors shall herein reference both accompanied and unaccompanied minors, persons under the age of 18, unless stated otherwise

⁴ CBSA Detentions at a Glance, 2011 and the CBSA 2011 National detention Statistics, National Case Management System (NCMS) Inland Enforcement Hearings and Detentions

⁵ NCMS Detention Activity Cube with statistics on persons detained, disaggregated by province, facility, location, gender and age range for 2010 and 2011- As agreed during the May 8th 2012 quarterly meeting (CRCS-CBSA), the CBSA is working to improve technical challenges in their data collection and will be providing the CRCS with accurate data in the coming weeks.



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- Minors who are not under a formal detention order and are accompanying their parents in the IHCs are not consistently reflected in statistical reports;
- Nationally, there is an inconsistent approach to the provision of care for detained minors and a resulting variability with regard to access to health care, education, recreation, co-mingling with criminal populations, use of restraints, and maintaining contact with family members.
- To date, the CBSA does not have a national, child specific policy or standards and operating procedures governing conditions and treatment for all minors in immigration detention. This policy would allow for a consistent approach to the protection and provision of services to all minors in CBSA care.
- Only immigration holding centres in Toronto and Quebec are able to detain families in the same facilities (though in separate units). Other provinces must resort to family separation which means that detention may not be defined by the best interest of the child but by available alternatives and CBSA capacity;
- The conditions under which minors are detained, given the lack of minimum standards of care specific to children as well as to detention itself, make them vulnerable to impaired development (cognitive, physical, emotional and social). This is further substantiated in the findings from the empirical research conducted by Cleveland, Kronick, Rousseau (2012).⁶

2.3.1 CBSA notification of minors to CRCS

Under Section 2.2 and 2.2.1 of the MOU “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”. To support this provision, the CRCS has developed internal Standard Operating Procedures to guide internal processes and responses when notified by the CBSA of detained minors and persons 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.

In further support to the MOU, the CBSA Pacific region and the CRCS Western Zone office have long held a notification process. The CBSA Prairies region and the CRCS Western Zone office are formalizing a similar notification process in 2012. This is especially important as in Western Canada the CRCS does not conduct formal detention visits in Saskatchewan, Manitoba, Northwest Territories and Nunavut but can take action in response to special cases including the detention of minors if needed. As such, the CRCS will be notified of any minors detained in the Prairies. The CRCS has in turn agreed to respond to the notification within 24 hours by phone, unless action by the CRCS is not required. The CRCS understands that the CBSA is currently reviewing its policies with respect to minors in an effort to provide clarification to CBSA regions

⁶ Cleveland J (PhD), Kronick R (MD), Rousseau C (MD). Bill C-4: the Impact of detention and temporary status on asylum seekers' mental health (January 2012)



on the detention of minors. The new policies will also include clarification on CBSA notification to the CRCS when minors and persons 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.

Please refer to the Recommendations section of the report at section 4.3, pg. 15.

2.4 Co-mingling immigration detainees with criminal populations

In 2011, CBSA housed 9,629⁷ immigration detainees in correctional facilities across the country. Of this population, it was reported that some were co-mingled with criminal populations including bunking in the same cells or same unit. As noted in previous reports to the CBSA, the co-mingling of immigration detainees with criminal populations across Canada is of great concern to the CRCS.

The CBSA explained that detention in correctional facilities resulted in cases where no IHC exists or when detainees are in an area where the local IHC is at full capacity. Detainees were also housed in correctional facilities in cases of known or suspected security risk such as danger to the public and criminality. Where IHCs exist, the CRCS recognises that, due to these security risks, detention in correctional facilities is sometimes the only option but takes the position that, such immigration detainees should not be co-mingled with criminal populations. This standard should be the same for both asylum seekers and non-asylum seekers, as the risk posed is the same to both populations.

It is important to note that although detainees are sometimes held in correctional facilities, the CBSA retains full legal responsibility for their care. This standard of care should therefore be upheld against the CBSA's National Standards & Monitoring Plan for the Regulation & Operation of CBSA Detention Centres (NSMP). The CRCS has found that this is not the case as detainees held in provincial correctional facilities are subject to different rules and regulations than those of the CBSA IHCs. Moreover, there is variability in rules and regulations between correctional facilities which, in some cases, compromises the rights of the detained individual.

This continued practice of co-mingling 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*. With respect to asylum seekers, the United Nations High Commission for Refugees' (UNHCR) *Revised Guidelines on Applicable Criteria and Standards Relating to the Detention of Asylum Seekers* makes specific reference to the practice of co-mingling and emphasizes the importance of the following in Guideline 10“(iii) the use of separate detention facilities to accommodate asylum-seekers. The use of prisons should be

⁷ CBSA 2011 National detention Statistics, National Case Management System (NCMS) Inland Enforcement Hearings and Detentions- As agreed during the May 8th 2012 quarterly meeting (CRCS-CBSA), the CBSA is working to improve technical challenges in their data collection and will be providing the CRCS with accurate data in the coming weeks.



avoided. If separate detention facilities are not used, asylum-seekers should be accommodated separately from convicted criminals or prisoners on remand. There should be no co-mingling of the two groups.”

2.4.1 Co-mingling and mental health

The CRCS has observed that some detainees co-mingled in correctional facilities exhibit signs of stress and mental health issues. This 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 have been displaced by armed conflict, experienced torture, and other traumatic experiences. According to a CRCS internal research on co-mingling, it was recognised that there is the potential for re-traumatization for immigration detainees with a history of arbitrary detention and/or torture.

2.4.2 Co-mingling with violent and mentally ill populations

Co-mingling also presents a greater degree of risk to immigration detainees who are co-mingled with a volatile population, some serving, or awaiting trial (in the case of a remand or pre-trial facility) for violent or gang-affiliated crimes. In Alberta, specifically at the Calgary Remand Centre, CRCS observed that immigration detainees, including those with no criminal history, were placed in units with persons who have committed violent crimes. Conversely, persons who are serving a sentence for violent crimes are routinely placed in dedicated immigration units, such as at the Fraser Regional Corrections Centre in British Columbia. The CRCS is concerned that immigration detainees could inadvertently experience harm due to exposure to violent or gang-affiliated criminals. The CRCS has observed an additional concern in that the correctional facilities in Alberta are also experiencing severe overcrowding and are resorting to triple bunking detainees in facilities such as the Edmonton Remand Centre.

The CRCS has also observed in the North Fraser Pre-trial Centre in British Columbia that detainees are sometimes housed with individuals suffering from mental disorders. The CRCS understands that this practice has been done when there is no capacity to house detainees in other areas. This has also been done to reduce the risk of immigration detainees being co-mingled with more violent offenders and to allow detainees access to additional staff support such as the Mental Health Liaison officer. However, being placed on a psychiatric ward for protection brings up safety concerns for those immigration detainees.

2.4.3 CBSA oversight

The CRCS welcomes the CBSA the Detainee Liaison Officer positions in the Pacific region and the Greater Toronto Area. These new staff positions will provide CBSA better oversight to monitor correctional facility compliance to CBSA standards related to the care and protection of immigration detainees. The CBSA should consider establishing Detainee Liaison Officer positions in other geographic areas.

Please refer to the Recommendations section of the report at section 4.4, pg. 16.

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2.5 Mental health in detention

The CRCS reiterates that the issue of mental health in immigration detention is one of great concern. The CRCS is acutely aware of the compounded vulnerabilities of detainees with pre-existing mental health illnesses and or those who become more susceptible to developing mental health issues while in detention. This risk is enhanced with prolonged detention. The CRCS is concerned that current available mental health support facilities and systems are not able to provide adequate or appropriate care to immigration detainees.

2.5.1 Availability of mental health supports

In 2011, the CRCS observed variability with regard to IHC psychosocial/psychiatric support services available to detainees. In Laval and the British Columbia IHC (due to it being a short-term facility), there were no such services available. In the Toronto IHC, counseling services were provided on a voluntary basis by a Social Worker, while a representative of the Salvation Army provided services to Spanish speaking detainees.

It was observed, in all IHC facilities, that a detainee exhibiting behavioral issues and/or symptoms ostensibly associated to a mental illness would be transferred to a correctional facility, hospital or a psychiatric hospital. While these transferred detainees remain under the detention authority of the CBSA, the extent of continued monitoring and follow-up by the CBSA is unclear to the CRCS. Follow-up is required to ensure detainees are not subject to unwarranted prolonged detention at the hospital/correctional facility and have continual access to Charter and legal rights.

Please refer to the Recommendations section of the report at section 4.5, pg. 17.

2.6 Access to family contact

The right to access and to maintain family contact for detained persons is protected within the *Body of Principles for the Protection of All Persons Under Any Form of Detention or Imprisonment* "A detained or imprisoned person shall have the right to be visited by and to correspond with, in particular, members of his family." 2011 Monitoring findings show that immigration detainees often face barriers to maintain family contact while in detention. These barriers differ according to facility, with even further variance observed between IHCs and correctional facilities. Detainees in Quebec, Alberta and British Columbia have expressed challenges to maintaining family contact.

2.6.1 Access to family contact -phone

A detainee without financial resources has variable access to phone cards across IHCs and correctional facilities. This creates challenges for a detainee to initiate or maintain family contact within Canada and overseas. Maintaining family contact is particularly important for detainees before removal from Canada. While the CRCS recognizes that the CBSA is not obliged to pay



for long distance calls, the CRCS encourages the CBSA to facilitate a detainee's right to correspond with family by phone.

Procedures have been implemented in both British Columbia and Alberta correctional facilities, as well as the British Columbia IHC, to better ensure a detainee's access to long-distance calls. However, access to and procedures governing long distance phone calls in most correctional facilities are discretionary and inconsistent. The CRCS is encouraged that, in February 2012, the CBSA Prairies indicated that local CBSA offices in Alberta would facilitate communication between detainees held in correctional facilities and their families overseas and within Canada. Additionally, the CRCS is encouraged that the CBSA Pacific has put standardised procedure in place to facilitate communication by long distance phone calls in the British Columbia IHC.

2.6.2 Access to family contact- visitation

Monitoring findings show that detainees at correctional facilities face more barriers to physical contact family visitation than those in IHCs. The CRCS recognises that visitation regulations at provincial correctional facilities are more restrictive. However, CBSA standards clearly outline the parameters for visitation. According to the NSMP, detainees can have visitors at a "maximum of two visitors at one time with a maximum of 4 visitors per day and can be extended beyond the work week". Regardless of the holding facility, CBSA should ensure that all detainees receive the care as outlined in applicable CBSA standards.

Please refer to the Recommendations section of the report at section 4.6 pg. 17.

2.7 Use of restraints and other restrictive measures

Detainees held in correctional facilities are often subjected to a blanket restraint policy meaning that all persons, including those deemed vulnerable, can be restrained; including during transportation from places of detention to hearings. This contravenes CBSA NSMP 6.8, which regulates the use of restraints during transportation and stipulates that exceptions may be made for minors, elderly persons, persons with disabilities, and pregnant women.

Please refer to the Recommendations section of the report at section 4.7 pg. 18.

3 PROPOSED LEGISLATION- IMPACT ON CRCS DMP SERVICE DELIVERY

On June 16th 2011, the Minister of Public Safety presented *An Act to Amend the Immigration and Refugee Protection Act, the Balanced Refugee Reform Act and the Marine Transportation Act* (short title: Preventing Human Smugglers from Abusing Canada's Immigration System Act or Bill C-4) in the House of Commons. The Bill's aim was to address large-scale irregular migration to Canada, particularly where human smuggling is involved. The Bill presented



several concerns to the CRCS with regard to the impact on both vulnerable persons as well as the impact on CRCS detention monitoring service delivery. While the Bill is now a component of Bill C-31, the implications of the Bill on the DMP program remain relevant and are therefore highlighted below.

3.1 Mandatory detention

Bill C-4, now a part of Bill C-31, calls for the mandatory detention of designated foreign nationals (DFN) for 12 months, upon arrival into Canada or upon the determination of immigration status 'designated foreign national'. The CRCS is concerned that the mandatory detention for one year will increase the vulnerability of DFNs. This concern is compounded for DFNs fleeing conflict or traumatic situations as mandatory (long-term) detention could exacerbate or result in mental health issues. The CRCS considers that mandatory detention will increase the risks to the well-being of vulnerable populations in detention: migrants who are minors (16 and 17 year olds), the elderly, pregnant and nursing women, persons who have existing mental and physical disabilities, persons who have been trafficked, asylum seekers, stateless persons and victims of torture and violence.

3.2 Minors in detention

It is important to recognize that children, irrespective of immigration status, are children foremost, and are therefore in need of special attention. The special status of children is recognised in both the IRPA and Immigration and Refugee Protection Regulations (IRPR) (s. 249). The IRPR requires that a child, a person under the age of 18, should only be detained as a measure of last resort as well as other special considerations. Given this definition, the CRCS identified the following potential implications of Bill C-31 on the rights and well-being of 16 and 17 year olds in the following areas:

- Detention of children as a measure of last resort, for the shortest appropriate period of time and subject to effective independent review;
- Primary consideration of the best interests of the child in all actions concerning children;
- The treatment of children with humanity and respect for their inherent dignity; and
- Appropriate assistance to enjoy, to the maximum extent possible, their rights as defined in the UNCRC and national legislation.

3.3 Co-mingling

The CRCS is aware that it is impossible to predict the numbers of persons who would be detained under this proposed legislation. However, the CRCS remains concerned that, given the CBSA's constrained resources to house current levels of immigration detainees in IHC facilities,



an increased number of detained persons could result in an increase in individuals detained in correctional facilities and potentially co-mingled with criminal populations. The practice of co-mingling is already problematic in Canada and is seen to contravene international human rights standards.

Please refer to the Recommendations section of the report at section 4.8, pg. 18.

4 RECOMMENDATIONS TO THE CBSA

4.1 Access to provincial correctional facilities

4.1.1 The CRCS encourages the CBSA to continue its efforts to ensure CRCS access to provincial correctional facilities in Ontario in order to carry out monitoring responsibilities as per the MOU.

4.2 Legal guarantees

4.2.1 The CRCS is encouraged that the CBSA is revising the *Information for People Detained under the Immigration and Refugee Protection Act* brochure to provide the most updated information to detainees. The CRCS encourages the CBSA to have this document translated into as many relevant languages as possible and to distribute the brochure consistently to all immigration detainees across the country, including detainees housed in provincial correctional facilities.

4.2.2 The CRCS recommends that the CBSA ensure that all people detained under the IRPA have up-to-date information concerning the immigration legal process and accessing counsel. CRCS encourages the CBSA to work with provincial legal aid partners to ensure that this printed information has regionally specific details and contact information concerning available legal aid services. This information should be translated into different languages to meet the communication needs of the detained populations.

4.3 Minors in detention

4.3.1 Regardless of the detention status, formal or defacto, any minor present in a CBSA facility or in provincial correctional or juvenile detention facility should be accurately accounted for in statistical reporting.

4.3.2 The best interests of the minor must be central in any decision to pursue his or her detention or decision regarding the separation from his or her custodial parent/guardian. This



should include consideration of alternatives to detention in all situations for families instead of only ensuring that minors and parent(s) are kept together. This practice, in many cases, leads to the *de facto* detention of a minor or, if considered not possible, placement of the minor in the care of provincial child protection services.

4.3.3 The CBSA should develop national, specific standards and operating procedures governing the conditions and treatment of all minors in immigration detention. These should address core conditions (special attention should be paid to physical and mental health), treatment (with special attention to restraints policies) and protection concerns (with special attention to internal and external reporting requirements). In addition, special consideration should be paid to the situations of minors with disabilities or those who have experienced trauma due to situations such as trafficking, conflict or torture.

4.3.4 The CBSA should ensure that any national child specific policy for minors, as mentioned above in recommendation 4.3.3, include guidelines for the care of minors who are *de facto* detained with their parent or guardian. It is recommended that the CBSA establish partnerships or arrangements with all appropriate government and community partners to ensure all services are available to minors and their family.

4.4 Co-mingling immigration detainees with criminal populations

4.4.1 All immigration detainees should be held in conditions that meet the minimum standards outlined in the CBSA NSMP Guidelines. CBSA retains the legal obligation to care for immigration detainees and should actively ensure that all minimum standards are complied with, regardless of the place of detention.

4.4.2 While the CRCS is generally opposed to the use of correctional facilities to house immigration detainees, in situations where the detainee may pose a security risk and correctional facilities are used, the CRCS recommends that the CBSA and provincial correctional authorities place immigration detainees in those facilities that are best suited and should, under no circumstance, involve the bunking of immigration detainees with criminal populations.

4.4.3 It is unclear to what extent the CBSA appropriately monitors provincial correctional facilities to ensure detainees are held according to the CBSA standards. To ensure the guidelines are properly followed, the CRCS recommends that the CBSA's oversight be expanded in all correctional facilities housing immigration detainees and that CRCS gains access to such facilities to carry out mandated monitoring duties.

4.4.4 The possibility of a Detainee/Jail Liaison Officer role, such as the one present in Ontario and now British Columbia, should be pursued in all geographic areas where immigration detainees are held in correctional facilities.



4.4.5 In correctional facilities, immigration detainees should be 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 on an immigration detainee's access to appropriate cultural, educational, and physical activities to which they are entitled.

4.4.6. The CBSA should establish an information sharing system with all provincial correctional facilities to facilitate timely and appropriate communication on immigration hold detainees. This could lead to a more informed evaluation on the risk posed by individual detainees transferred to correctional facilities, which, in turn, should lead to the application of restrictive measures only when indicated by the evaluation.

4.5 Mental health in detention

4.5.1 The CBSA should recognise that detainees in both IHCs and provincial correctional facilities are at an increased risk of developing or exacerbating mental health issues, particularly persons who have experienced trauma and those on long-term detention holds. The CBSA should ensure that all immigration detainees, regardless of detention location, have access to appropriate counselling, psychological and/or psychiatric services.

4.5.2 Detainees placed or transferred to institutions for mental health care still remain under the detention authority of the CBSA. As such, the CBSA should ensure that all detainees who are transferred to such facilities be continually monitored in order to facilitate detainees' access to increased psychiatric services. The CBSA should ensure that all detainees receive adequate follow-up during their time under psychiatric care. This will help mitigate unwarranted and prolonged detention and ensure that all persons have continual access to their legal process.

4.6 Access to family contact

4.6.1 The CBSA should ensure that all detainees, in both immigration holding centres and correctional facilities, are given adequate opportunity to communicate with family overseas or in Canada. The CBSA should formally ensure that detainees are fully aware of the opportunity to use the phones and the rules regarding local and long distance calling.

4.6.2 Detainees who cannot afford phone cards should be provided with phone cards to better ensure family contact is maintained.

4.6.3 The CRCS recognizes that CBSA regulations regarding visitation are much more permissive than those in correctional facilities. To ensure a detainees' rights to family contact, special consideration for detainees in correctional facilities to have face to face visitation should be made for those who are not a security threat.



4.7 Use of restraints

4.7.1 The CBSA NSMP 6.8 *regulates* that regarding restraints during transportation, exceptions may be made for minors, elderly persons, persons with disabilities, and pregnant women". As the detaining authority responsible for all IRPA detainees, the CBSA should ensure that all facilities (correctional and IHCs) used to house detainees are in compliance with the NSMP policy on the use of restraints.

4.7.2 As mentioned under recommendation 4.4.6, the CRCS encourages the CBSA to increase the sharing of necessary information with correctional staff, on detainees transferred to correctional facilities. This will allow correctional facilities to appropriately evaluate detainees' level of risk and may reduce the application of restrictive measures on immigration detainees.

4.8 Proposed legislation

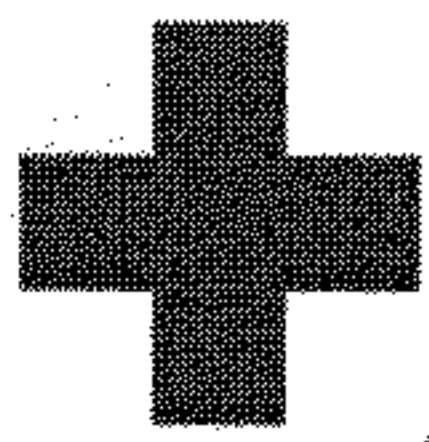
4.8.1 The CRCS recommends that, in the event of any change in immigration legislation which may impact migrants in need of special protection, every effort is made to ensure that such persons are protected in compliance with all international standards.

4.8.2 The CRCS recommends that detention is to be avoided or considered a last resort for minors (under 18), elderly persons, pregnant women, persons who are ill, persons with physical disabilities and persons with behavioural or mental health problems. For persons falling into these categories alternatives to detention should always be considered.

5 CONCLUSION

The CRCS recognizes and commends the CBSA for positive changes in detention practices such as:

- the pending increase in psychiatric services in Ontario and Quebec immigration holding facilities;
- the establishment of a detainee liaison officer position in the Pacific region;
- the establishment of a dedicated phone line for legal counsels' ease of access to clients at the British Columbia IHC;
- improved access to long distance phone calls for immigration detainees in the British Columbia IHC and the local CBSA offices in Alberta;
- the development of a formal notification agreement between CBSA Prairies region and the CRCS – Western zone, for minors and persons unable to appreciate the nature of the proceedings; and



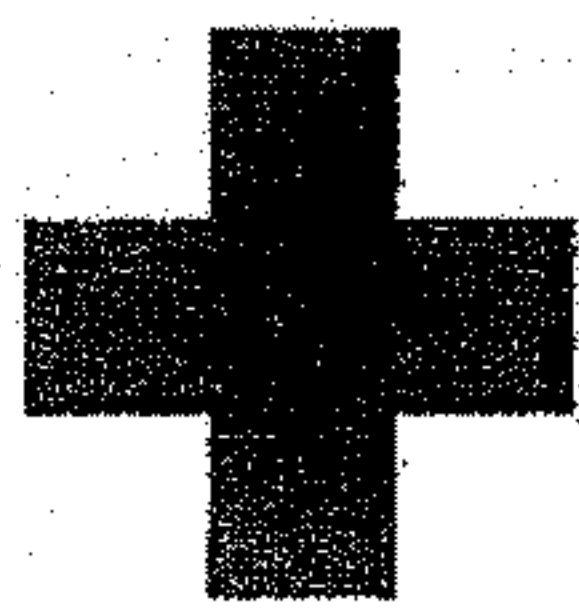
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- the pending revision of the *Information for People Detained under the Immigration and Refugee Protection Act Brochure* for immigration detainees.

The CRCS remains concerned about persistent protection issues identified in this report as well as previous CRCS annual reports. Namely, the CRCS is concerned about issues related to legal guarantees and legal safeguards, the detention of minors, co-mingling immigration detainees with criminal populations, insufficient access to mental health care by detainees in all places where detainees are held, the use of restraints on vulnerable detainees and the lack of access to family contact. The CRCS will also continue to assess the potential impact of Bill C-31 on the CRCS programming, specifically the DMP Program and Restoring Family Links services to immigration detainees.

The CRCS enjoys an open relationship with the CBSA, and welcomes further dialogue on these issues. The CRCS looks forward to discussing the recommendations and follow-up from the present report at a meeting with the Vice-President Enforcement and the Vice-President Operations. The CRCS is confident that both agencies will continue to work toward the common goal of ensuring that immigration detainees are treated with dignity and respect and in compliance with all applicable domestic and international standards.

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canadienne**

**REPORT TO THE
CANADIAN BORDER SERVICES AGENCY
ON THE
DETENTION MONITORING ACTIVITIES
OF THE CANADIAN RED CROSS SOCIETY**

2010

CONFIDENTIAL

30 August 2011

2010 REPORT TO THE CANADIAN BORDER SERVICES AGENCY ON THE DETENTION MONITORING ACTIVITIES OF THE CANADIAN RED CROSS SOCIETY

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I. INTRODUCTION

The Canadian Red Cross Society (CRCS) is a neutral, independent humanitarian organization. The mission of the CRCS is to improve the lives of vulnerable people by mobilizing the power of humanity in Canada and around the world.

The Detention Monitoring Program 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 CRCS monitor the treatment and conditions of immigration detainees in detention facilities.

On November 3, 2006, the Canadian Border Services Agency (CBSA) entered into a Memorandum of Understanding (MOU) with the CRCS. The MOU mandates the CRCS to monitor the conditions of persons detained under the Immigration and Refugee Protection Act (IRPA). Article 3.1 of the MOU provides that the CRCS "...will monitor compliance with all applicable domestic standards and international instruments to which Canada is a signatory".

According to article 4.2 of the MOU, the CRCS is required to provide the CBSA with an annual report that summarizes globally the detention monitoring activities, identifies discrepancies between the CBSA's detention practices and the applicable domestic and international standards and provides recommendations where appropriate to the Vice-President, Enforcement and the Vice-President, Operations, of the CBSA.

Initially the CRCS provided the CBSA with oral reports. However, since 2008, the CBSA requested the CRCS provide written annual reports instead. The first annual written report to the CBSA was submitted last year and covered detention monitoring activities in 2008 to 2009 (hereinafter referred to as the CRCS 2008-2009 annual report). This is the second written annual report.

The purpose of this report is to provide the CBSA with an overview of the detention monitoring activities of the CRCS in 2010, in compliance with Article 4.3 of the MOU.

The report provides:

- a brief presentation of the CRCS detention monitoring program mandate and work methodology;
- an overview of the CRCS monitoring activities in 2010;
- a summary of national protection concerns;
- a summary of provincial protection concerns;
- recommendations to the CBSA;
- a conclusion and next steps.

1.1 The CRCS Detention Monitoring Program

The Canadian Red Cross Society detention monitoring work is carried out in accordance with the MOU and the *Canadian Red Cross Detention Monitoring Guidelines* (hereinafter the DM Guidelines) which include minimum performance standards for the program. All CRCS detention monitors participate in a detention monitoring training program conducted by the CRCS. New team members are mentored into their work by seasoned monitors.

The CRCS monitoring team typically consists of male and female personnel. Teams are accompanied by a health delegate with a medical or nursing background when needed.

In its detention monitoring work, the CRCS focuses on four areas:

- conditions of detention, including but not limited to detention facility conditions, access to food, medical services, access to recreation/outdoors, access to information and transportation;
- treatment of detainees by facility staff, contractors and facility population;
- access to legal safeguards;
- ability to maintain family contact, including access to and communication with relatives.

Where the CRCS 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 CRCS monitoring work generally focuses on systems rather than individual cases. This involves understanding the policies, standard operating procedures and mechanisms which a facility operates within, including how staff is trained and how services are provided to the detainees. This approach benefits all current and future detainees rather than a single individual or family. Occasionally, this process includes the representation of one or more individual detainees, where the affected detainee(s) request(s) such assistance and/or consent(s) to it.

The CRCS visiting teams conducting a monitoring visit 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 CRCS is concerned with the well-being of all persons detained under the IRPA, vulnerable populations are identified during a detention monitoring visit and 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.

1.2 Detention Monitoring Visit Methodology and Reporting Process

The process involved in monitoring a facility is as follows:

- A monitoring visit begins with a meeting with the facility director or his/her designate, followed by a short explanation of the CRCS mandate in the facility, as well as a follow up on items from previous visits.
- The facility representative then provides a general update on the facility's population and conditions. This involves some demographic information on the detainees such as the number of detainees by gender and nationality.
- The visiting CRCS team will also ask specific questions to identify particularly vulnerable detained persons. Facility representatives are asked about detention conditions, trends or any overall changes in the population or incidents within the facility.
- The CRCS team proceeds to meet with the detainees. The CRCS representatives will typically present their mandate to a group of detainees, distribute a sheet that explains the CRCS mandate in various languages and invite detainees to speak with team representatives if they wish. Sometimes, detainees share issues in a group setting while others request a private interview. The CRCS team members will take note of any issues and/or concerns raised during the interviews.
- After concluding the confidential interviews with detainees, the CRCS 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: outline general observations regarding conditions at the facility; indicate what is working well, and what is not; with prior consent of the detainee, address areas of specific concern to individual detainees; recommend actions and agree on a timeframe with facility representatives to deal with areas of concern.
- The CRCS normally concludes its visit after the debriefing.
- The CRCS will thereafter continue to monitor how noted concerns in the facilities are addressed by the authorities. Issues which are beyond the mandate and/or authority of the facility staff will be referred to the CRCS detention monitoring national manager, who will determine the appropriate follow-up.
- Internal and confidential Red Cross site visit reports are then prepared, to highlight and follow any trends in protection concerns. 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. The annual report to the CBSA mandated by the MOU then follows.

1.3 Overview of the CRCS Monitoring Activity in 2010

Immigration detainees were held in various facilities across Canada in 2010. These facilities include the three federal immigration holding centres operated by the CBSA, namely, the British Columbia Holding Centre at Vancouver International Airport, Laval Centre de prévention de l'immigration near Montreal and the Toronto Immigration Holding Centre, as well as provincial and municipal correctional facilities that hold sub-contracting arrangements with the CBSA. The Kingston Immigration Holding Centre has been dormant since 2010.

1.3.1 Detention Monitoring Visits in 2010

- In 2010 the CRCS made a total of 37 detention monitoring visits as follows:

Province	Facility	Number of times visited
Alberta	Calgary Remand Centre	4
	Edmonton Remand Centre	4
British Columbia	Allouette Correctional Centre for Women	10
	British Columbia Holding Centre	3
	Burnaby Youth Custody Services Centre	10
	Fraser Regional Correctional Centre in Maple Ridge	13
	North Fraser Pre-Trial facility	3
	Surrey Pre trial Services Centre	3
Ontario	Toronto Immigration Holding Centre	3
Quebec	Centre de détention de Rivière-des-Prairies	1
	Centre de prévention de l'immigration de Laval	4

There were also numerous communications and meetings with facility management offices, the CBSA Headquarters, the CBSA regional offices and provincial corrections personnel to discuss detention conditions and the treatment of detainees.

Throughout 2010, the CRCS has enjoyed a constructive working relationship with the CBSA officials. The CBSA officials were open to dialogue with the CRCS, at the facility, regional and national levels. The CRCS had no difficulty in accessing the CBSA administered facilities, speaking with the detainees or communicating and working toward resolution of issues with the authorities. The CBSA officials recognised the CRCS mandate to promote a protective environment for the detainees in their facilities, as well as the obligation of the CRCS to fulfill its role on a neutral and independent basis.

2. PROTECTION ISSUES

As a result of its detention monitoring visits, the CRCS has identified several key protection concerns:

- the lack of access by the CRCS to all provincial correctional facilities where detainees are currently being held;
- the practice of co-mingling immigration detainees with criminal populations,
- the detention of minors;
- the insufficient access to mental health care by detainees; and
- issues related to the right to legal representation of detainees that arose in the context of the response concerning the arrival of the MV Sun Sea in August 2010.

The following sections will provide a summary of these key protection issues.

2.1 Access to Provincial Correctional Facilities

While the MOU between the CBSA and the CRCS provides a mandate for the CRCS to visit all persons detained under IRPA, the CRCS currently only has access to the CBSA-operated federal immigration holding centres and provincial and municipal correctional facilities in Alberta, British Columbia and the Rivière-des-Prairies facility in Quebec. Without full access to correctional facilities, the CRCS is concerned that it cannot fully fulfill its mandate to monitor the detention conditions in all places where immigration detainees are being held.

Due to the high number of detainees held in Ontario provincial correctional facilities (more than half of individuals detained under IRPA are in Ontario) the lack of access by CRCS to immigration detainees in these facilities remains a particular concern for the CRCS. In February 2011, Ron Kelusky, the CRCS Director General for Ontario Zone, communicated by letter with the Ontario Ministry of Community Safety and Correctional Services on this matter. The CRCS has not received a response to date. The CRCS understands that an MOU must be signed between the CBSA and the Province of Ontario in order to provide the CRCS with access to the facilities. The CRCS remains concerned that little progress is being made in this area.

Please refer to the Recommendations section of the report at section 5.1, p. 15.

2.2 Co-mingling Immigration Detainees with Criminal Populations

As mentioned in the CRCS 2008-2009 annual report for the CBSA, the CRCS carried out a study to better understand the practice of co-mingling in Canada (hereinafter referred to as the co-mingling study) and its consequences on the conditions of persons detained under IRPA. On November 30th 2010, the study's findings were presented to the CBSA representatives during a meeting at the CBSA national headquarters. However, at that time, the Director of Inland Enforcement was unable to meet with CRCS representatives.

The co-mingling study reaffirms the CRCS' position that the practice of co-mingling immigration detainees with criminal populations in correctional facilities is of particular concern because it is in contravention of the International Covenant on Civil and Political Rights and internationally recognized standards such as the Convention on Migrant Workers, and the United Nations Standard Minimum Rules for the Treatment of Prisoners.

With respect to asylum seekers, the United Nations High Commission for Refugees' (UNHCR) Revised Guidelines on Applicable Criteria and Standards Relating to the Detention of Asylum Seekers make specific reference to the practice of co-mingling and emphasize the importance of the following in Guideline 10 (iii): separate detention facilities should be available to accommodate asylum-seekers; the use of prisons should be avoided for the detention of asylum-seekers; in the situation where separate detention facilities are not used, asylum-seekers should be accommodated separately from convicted criminals or prisoners on remand and there should be no co-mingling of the two groups. Co-mingling immigration detainees and criminally charged or convicted inmates can be extremely stressful for immigration detainees without a criminal background. This holds true especially for refugee claimants, many of whom have been displaced from their country of origin as a result of traumatic experiences.

The findings of the co-mingling study show that immigration detainees in correctional facilities do not receive the same treatment as immigration detainees in the CBSA-run facilities. Provincial correctional standards for the treatment of inmates are often more restrictive than the standards for immigration detainees at the CBSA-run facilities. For example, the study found that detainees at correctional facilities face more barriers accessing regular phone and in person contact with their legal counsel than those in Immigration Holding Centres.

The study also found that immigration detainees at immigration holding centres better understand the legal process as opposed to detainees held in non CBSA-run facilities where they are co-mingled – this is the result of detainees in the CBSA run facilities having access to the CBSA staff and NGO representatives, from organizations such as CRCS or the UNHCR.

The CRCS is concerned by the lack of information sharing between the CBSA and provincial correctional authorities about immigration detainees held in provincial correctional facilities. The CRCS found that the CBSA does not consistently share key information about arriving detainees with classification staff at correctional institutions. Information sharing would allow the facility to distinguish between immigration detainees who present security concerns from those who do not thereby reducing the use of restrictive measures such as restraints on detainees who do not pose a security risk.

Please refer to the Recommendations section of the report at section 5.2, p.15.

2.3 Minors in Detention

From May to December 2010, the CRCS carried out an internal national study (hereinafter referred to as the minors study) to understand the scope and impact of the detention of minors under the IRPA. The study also examines those minors who are *de facto* detained with their parent(s) or guardian(s). The minors study was funded by the International Committee of the Red Cross (ICRC).

The objectives of the study were to understand the extent of the detention of minors under the IRPA, to document the unique vulnerabilities facing minors in immigration detention and the impact of detention on their well-being, to understand the extent of immigration detention of minors in Canada, to identify gaps in protection services, to evaluate and analyse international standards and policies with regard to minors in detention, and to explore alternatives to the detention of minors.

Even though the IRPA provides that children should only be detained as a measure of last resort, the minors study found that a significant number of children spend time in immigration detention in Canada, some with a parent and some unaccompanied.

In 2009-2010, Canada detained an estimated 322 minors under the IRPA. This represents only a small portion of all minors seeking asylum in Canada and less than 2 percent of the total number of detained persons. The majority of detained minors are held at the CBSA-run immigration holding centres (IHC) in Laval, Quebec and Toronto, Ontario, with the remainder referred to juvenile detention centres in other provinces. The detention of minors seems to follow a similar trend as the detention of adults, with Ontario having the highest numbers, followed by the Pacific Region or Quebec, depending on the reference period.

The minors study found that of the 322 minors detained in 2009-2010, 75% were refugee claimants who may have lived through traumatic experiences and over 10% were unaccompanied. The minors study noted increased vulnerability for minors in immigration detention in Canada. In particular, detained minors are vulnerable to impaired development (cognitive, emotional and social) by virtue of the deprivation of their liberty, and also by the conditions under which they are detained. Minors are also vulnerable to increased risk of violence and abuse because of their age and dependence on adults. They face negative consequences to their health in the short and long-term. They are often made more vulnerable by their inability to access programmes and written material in their language of origin while in detention.

The minors study noted that conditions of detention of minors tend to vary in Canada. Variability is present with regard to access to health care, education, recreation, co-mingling with criminal populations, use of restraints, disciplinary action, and maintaining contact with family members, and is due, in part, to the absence of standard child specific CBSA policies and operating procedures for the CBSA officers. For example, some regions such as Quebec and Ontario with IHCs in Laval and Toronto, have the capacity to keep families in the same facilities, though in separate units. Other provinces often have to resort to family separation. For instance, where the parent or the guardian is detained over 72

hours in the Atlantic, Prairies and Pacific zones, the minors accompanying him or her are detained in provincial juvenile detention centres which administer custody under the 2002 *Youth Criminal Justice Act* (YCJA).

Another example of the subjective application of policy with regard to minors relates to the CBSA's decisions to keep minors in IHCs when they are not officially detained but present with their detainee parent or guardian (detained *de facto*). This results in the ongoing and longer-term detention of minors accompanying their parent or guardian.

Variations in the conditions of detention of minors can also be attributed to factors outside of the CBSA's control that fall under the jurisdiction of the provinces. For example, despite the requirements under the Immigration and Refugee Protection Regulations (IRPR) and in the CBSA operations manual on detention, the involvement of child protective services with minors in immigration detention has not been a consistent practice. Indeed, section 249 of the IRPR outlines that detaining authorities should consider the availability of alternative arrangements with local child-care agencies or child protection services for the care and protection of children (CIC, 2007; Government of Canada, 2002b) when considering the detention of children. The lack of the systematic involvement of child protection services by CBSA nation-wide presents a missed opportunity for increased protection and oversight where children are detained.

An important and positive departure from earlier practice where family separation was the norm for persons in detention is the response by CBSA Pacific to the large-scale marine arrival in British Columbia (BC) in August 2010. The CBSA Pacific worked with its partners at the BC Ministry of Children and Family Development to ensure that mothers and children would remain together during detention. On the other hand, provisions were not made for fathers to be detained with their children or for siblings over 18 to be detained together. The CRCS 2008-2009 annual report also highlighted the concern that in some facilities when a child is accompanied only by the father, both male and female children are detained in the male section of the facility. The CRCS recommended that alternatives to detention be sought and that, in the short term, an officer be assigned to oversee the children. A female officer should be assigned to oversee a female child.

Please refer to the Recommendations section of the report at section 5.3, p. 15.

2.4 Access to Mental Health Care in Detention

The mental health needs of immigration detainees have consistently emerged as an area of special concern in the CRCS monitoring visits to detention facilities. The CRCS is acutely aware of the vulnerabilities of detainees with pre-existing mental health illnesses and or those who become susceptible to developing mental health issues in detention. In addition there is evidence that the length of detention has a proportionately detrimental impact on mental health of detainees.

The CRCS co-mingling study highlighted the mental health care needs of immigration detainees and raised concerns regarding the impact of detention on the mental health of

detainees, the systematic housing of immigration detainees with mentally ill populations in some facilities and the potential detrimental effects of co-mingling of immigration detainees with highly stressed criminal populations. The study concluded that detention can put enormous mental strain on an otherwise healthy individual and that the strain is even worse for individuals with mental health issues.

Detainees in the CBSA-run detention facilities and in some provinces, detainees in correctional facilities, have access to medical staff for physical health issues, but often do not have consistent access to counselling, psychological or psychiatric services, when needed. There is a need to systematize access to mental health services for all detainees.

In the 2008-2009 annual report to the CBSA, the CRCS highlighted the need for a comprehensive mapping of existing services and referral systems available for persons with mental health illness and recommended that the CBSA put into place systems to better identify and treat individuals with mental health problems in detention facilities. In addition, the CRCS continues to monitor the implementation of the recommendations emanating from the consultations on mental health and detention undertaken in 2006 by the UNHCR and is committed to working with the CBSA to explore how to implement these recommendations.

The CRCS has identified the issue of access to mental health in immigration detention as a protection issue of special concern and is exploring funding opportunities in order to carry out its research on access to mental health in immigration detention in Canada in 2012.

Please refer to the Recommendations section of the report at section 5.4, p.16.

3. RESPONSE TO MV SUN SEA ARRIVAL

On 13 August 2010, the vessel MV Sun Sea arrived off the coast of British Columbia carrying 492 Sri Lankan migrants who claimed refugee status. Most of them were detained by the CBSA under the IRPA. Exceptions included minors who were *de facto* detained with their female relative/guardian. Representatives of the CRCS were on-site immediately post-arrival at the Canadian Forces Base Esquimalt and responded by conducting regular and on-going monitoring visits of those detained and providing them with the CRCS Restoring Family Links services.

As of May 2011, monitoring teams conducted approximately 30 site visits to the three facilities housing the above mentioned Sri Lankan refugee claimants. During these visits, the CRCS focused on the following: restoring and maintaining contact between claimants and their relatives overseas and in Canada, including those detained separately and minors; arrangements for shelter/accommodation of the claimants within facilities; the use of restraints especially for those deemed vulnerable; the treatment of detainees by staff at the facilities and by other detainees; access to legal guarantees and compliance with Canadian and international standards.

In addition, the CRCS established a toll-free line to dispatch calls from people living in Canada wanting to reconnect with relatives who arrived on the MV Sun Sea. This service was provided as the CBSA was unable to ensure family contact between migrants and relatives in Canada.

3.1 Right to Legal Representation

In the context of the response to the MV Sun Sea arrival, the CRCS is particularly concerned about the protection of the right to legal representation of a number of the Sri Lankan claimants who arrived on the MV Sun Sea, in particular during questioning by authorities.

A number of MV Sun Sea detainees were involved in simultaneous, multiple on-going administrative and legal procedures, as refugee claimants, as witnesses to the alleged crime of human trafficking and/or as individuals who were subject to criminal investigation for crimes allegedly committed inside and/or outside of Canada. In these cases, it is not clear whether the investigation by Canadian authorities of alleged criminal activity was conducted for the evaluation of their admissibility for refugee status or for possible criminal prosecution. This confusion was reinforced by the fact that most detainees were questioned by agents from different organizations, namely, the CBSA, the Royal Canadian Mounted Police (RCMP) and the Canadian Security Intelligence Service (CSIS). Furthermore, there were occurrences where agents from the three organizations were present at the same time during the interrogations.

Individuals in immigration detention have certain basic legal rights under both international and domestic law. These include the rights: to be informed of the reasons of their detention and their legal rights, to a review of the reasons of the detention, to legal counsel, and to access official representatives of the government of the country of their nationality or the UNHCR.

In Canada, the right to retain counsel includes the right to be promptly informed not only of the reason of their detention but also of the reasons for the questioning by the authorities. This right is important as it allows the individual being questioned an opportunity to provide adequate information to their counsel about their reasons for detention.

Please refer to the Recommendations section of the report at 5.6.1 at p. 17.

PROVINCIAL PROTECTION ISSUES

The following section highlights some province-specific protections concerns that were observed by the CRCS during detention monitoring visits in 2010 and not discussed above.

4.1 Alberta

4.1.1 Access to Video Conferencing from Calgary Remand Centre

Detainees attending an Immigration and Refugee Board (IRB) are shackled during transportation to and from the correctional facility, during the hearing and may be riding with convicted criminals. This experience is very hard on those who do not have a criminal background and increases their stress and anxiety. In the 2008-2009 annual report, the CRCS recommended that the use of video conferencing could eliminate the stress and anxiety of detainees by limiting the full day experience of being shackled and reducing the time that is needed for attending the IRB hearing.

Please refer to the Recommendations section of the report at section 5.5, p. 16.

4.1.2 Access to Family Contact

The CRCS observed an increase in detainees' communication with their families as a result of the increased availability of phone cards for the use of detainees. Although access to the phone cards has increased, the CRCS continues to find that detainees are unaware of this service and continues to engage with the facilities to ensure that detainees are informed about the processes for accessing phone cards to complete long-distance phone calls.

Please refer to the Recommendations section of the report at section 5.9, p. 17.

4.1.3 Access to Legal Aid

The CRCS noted an increase in queries from detainees about how to access legal aid. This issue was raised in the 2008-2009 annual report and it was suggested that the facilities provide a one page information document for IRPA detainees to ensure that they are informed about how to access legal services, including legal aid.

In the above mentioned report, the CRCS noted that correctional facilities in both Edmonton and Calgary agreed to provide this document. The CRCS also agreed to provide content for this document, with consultation from the CBSA Prairies Division. The CBSA currently has a draft version of this document and is awaiting a final version from the CRCS. Once finalized and approved by the CBSA, it is expected that the CBSA will then distribute the document to all immigration detention facilities.

4.2 British Columbia

4.2.1 Access to Legal Guarantees, Including Legal Aid

The CRCS notes that detainees have a lack of knowledge about the reason for their detention and about access to legal representation. Furthermore, several detainees indicated that they had difficulty contacting their counsel and having counsel contact them while in detention. This represents an ongoing concern of the CRCS since, as mentioned above, the right to the assistance of counsel includes not only the right to retain counsel, but also the right to communicate confidentially with counsel when necessary as well as the right to have counsel present at hearings. Moreover, the right to assistance from counsel is important for immigration detainees not only because they are being deprived of their liberty, but also because they are being detained in connection with a legal process that will determine whether they receive permission to remain in Canada. The assistance of counsel may be of vital importance to an individual who is not familiar with Canada's legal system and official languages.

With regard to the MV Sun Sea arrival, the CBSA provided a one-page information document on the legal process to detainees in their language of origin. The CRCS in BC will assist the CBSA in updating this document to take account of the changes in the law since the adoption of the Balanced Refugee Reform Act. It is understood that the document will be produced in multiple languages.

Please refer to the Recommendations section of the report at section 5.6.2, p. 17.

4.2.2 Use of restraints

As explained above in the case of detainees traveling from the Edmonton Remand Centre to Calgary or in the case of BC Corrections, the CRCS notes that immigration detainees, including those deemed to be vulnerable, are often restrained during transportation from places of detention to hearings. The CBSA *National Standards & Monitoring Plan for the Regulation & Operation of CBSA Detention Centres* indicate that exceptions should be made for detainees deemed to be vulnerable such as pregnant women and the elderly.

Please refer to the Recommendations section of the report at section 5.7, p. 17.

4.2.3 Access to Family Contact

The CRCS notes that immigration detainees in BC often face significant barriers to maintaining family contact while in detention. Specific concerns expressed by detainees have been raised with the CBSA and include insufficient funding to make long-distance telephone calls to their relatives overseas or in Canada.

Please refer to the Recommendations section of the report at section 5.9.1, p. 17.

4.3 Quebec

4.3.1 Legal Safeguards

Detainees who speak neither French nor English have difficulty understanding their rights, the legal process and the reason for their detention since the CBSA brochures are only available in French and in English.

Please refer to the Recommendations section of the report at section 5.6.2, p. 17.

5. RECOMMENDATIONS TO THE CBSA

5.1 Access to Detention Facilities

5.1.1 The CRCS recommends the CBSA continue efforts to secure the CRCS access to all correctional facilities where immigration detainees are being held. In particular, the CRCS strongly recommends that the CBSA continue negotiations with Ontario Correctional Services towards signing a MOU that would allow the CRCS access to detainees in Ontario correctional facilities.

5.2 The Practice of Co-mingling

5.2.1 All immigration detainees should be held in conditions that meet the minimum standards outlined in the CBSA Guidelines.

5.2.2 Alternatives to detention in correctional facilities should be sought for vulnerable persons, including refugee claimants, minors and people with mental illness, who are not a 'danger to the public'.

5.2.3 When correctional facilities must be used to house immigration detainees, the CRCS recommends that the CBSA and provincial correctional authorities place immigration detainees in those facilities that are best suited to meet the CBSA's guidelines. To ensure the guidelines are properly followed, the CRCS recommends that the CBSA's oversight be expanded in all correctional facilities housing immigration detainees.

5.2.4 In correctional facilities, immigration detainees should be 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.

5.2.5 When a detainee is transferred to a correctional facility, the CBSA should increase its information sharing with that correctional facility and establish an information sharing system. This could lead to a more reliable evaluation of the risk posed by individual detainees which, in turn, would lead to restrictive measures only being used when necessary. In addition, it would be useful to set up procedures, that would ensure that the Director of the immigration holding centre clearly document reasons for transfers of detainees in an immigration holding centre to a correctional facility.

5.2.6 The CRCS recommends that another meeting between the CRCS and the CBSA Director of Inland Enforcement be scheduled in order to discuss the results of the CRCS co-mingling study, including follow-up.

5.3 Minors in Detention

5.3.1 The best interest of the child should be the primary consideration in the decision to pursue the detention of a minor or his or her parent.

5.3.2 Alternatives to detention in *all* situations involving a minor should be explored and are encouraged. The detention of parents with accompanying minors, should not automatically lead to family separation or placement of the minor in the care of the State.

5.3.3 The CBSA should explore alternatives to detention for families as a whole instead of only ensuring minors and parents remain together.

5.3.4 National child specific standards and operating procedures governing conditions and treatment for all minors in immigration detention must be adopted and implemented. These should address core conditions (special attention should be paid to health), treatment (with special attention to restraints policies) and protection concerns (with special attention to internal and external reporting requirements). In addition, special consideration should be paid to the situations of minors with disabilities and appropriate services should be provided (including psychological and physical health care) for those potentially trafficked.

5.3.5 The CBSA should adopt a specific policy for minors *de facto* detained with their parent or guardian and should continue to consistently communicate policy and procedures to its staff. This will ensure that contact between family members is maintained and that the appropriate government and community partners are involved to ensure that legal safeguards are provided.

5.4 Access to Mental Health Care in Detention

5.4.1 The CBSA should ensure that detainees in both the CBSA run immigration facilities as well as the provincial correctional facilities have access to counselling, psychological or psychiatric services, where appropriate.

5.4.2 The CRCS recommends that the CBSA implement the recommendations emanating from the consultations on mental health and detention undertaken in 2006 by the UNHCR.

5.5 Video Conferencing

5.5.1 The CBSA should discuss with the IRB facilitating the use of video conferencing at correctional facilities for IRB hearings where possible. This will avoid long hours of travel for detainees while being restrained and the incidence of co-mingling during transportation.

5.6 Access to Legal Representation

5.6.1 The highest procedural standards should apply during interrogations when individuals are being investigated for different reasons at the same time. For example, if information is gathered in the course of criminal investigations, the authorities should grant the detainee the same rights afforded to criminal defendants, including the right to counsel.

5.6.2 Ensure that the CBSA and correctional facilities distribute copies of the information brochure for people detained under the IRPA. The CBSA should ensure that these brochures are translated in several languages so that detainees' have information about the legal process and about how to access counsel. In addition, the one-page document that is being produced by the CBSA Prairies division on the topic of how to access legal should be produced for each province, translated in various languages and made available to detainees.

5.7 Use of Restraints

5.7.1 The CBSA should work with its provincial counterparts to agree on a shared policy about the use of restraints for vulnerable individuals detained pursuant to the IRPA. In addition, the CBSA should refine its standard operating procedures with subcontracted companies that ensure detention to reflect this agreed policy in order for the companies to make more accurate risk assessments and avoid the unnecessary use of restraints.

5.8 Language

5.8.1 The CBSA should ensure that all detainees have access to information about the, immigration legal process in their language of comprehension, through the use of interpreters and translated material.

5.9 Access to Family Contact

5.9.1 The CBSA should ensure that all detainees are given adequate opportunity to communicate with family and friends overseas or in Canada and that they are made aware of the processes to acquire long distance telephone cards, when necessary.

6. CONCLUSION

Despite progress in detention practices, the report identifies protection concerns that were reported in the CRCS 2008-2009 annual report which persist, namely the practice of co-mingling immigration detainees with criminal populations, the detention of minors, the insufficient access to mental health care by detainees and the use of restraints. The report also highlights outstanding issues related to the lack of access to family contact and the right to legal representation of detainees, including the lack of access by detainees to information about the immigration legal process in their language of comprehension. Due to the inconsistency in detention practices across regions there is a need for system wide improvements on all these issues.

The CRCS continues to be concerned that the lack of access by the CRCS to provincial and municipal correctional facilities outside of Alberta, British Columbia and the Rivières des Prairies facility in Quebec, prevents the CRCS from fulfilling its mandate to monitor the detention conditions in all places where immigrants detainees are held in Canada. As noted in the report, since more than half of individuals detained under IRPA are in Ontario, the lack of access to provincial and municipal correctional facilities in Ontario is a significant impediment to fulfilling the MOU.

Still, the CRCS is encouraged that there has been progress in the conditions of immigration detention in other areas. For example, the initiative by the CBSA Pacific to ensure that detained mothers and their children who arrived on the MV Sun Sea remained together during detention is an important precedent and departure from earlier practice where family separation was the norm. In addition, the CRCS noted an overall decrease of reported incidents of disrespectful behaviour by security staff at the Toronto Immigration Holding Centre due to the increased presence of CBSA staff at the facility. In the same vein, a cultural sensitivity training was conducted jointly by the Montreal-based organization *Action Réfugié Montréal*, the United Nations High Commissioner for Refugees and the CRCS for the benefit of staff of the *Centre de prévention de l'immigration*. The benefits of these initiatives should be evaluated by the CBSA and consideration should be given towards adopting more system wide approaches.

The CRCS welcomes further dialogue with the CBSA around these issues and looks forward to discussing the recommendations emanating from the present report and their follow-up, aiming towards a common goal of ensuring that immigration detention under IRPA is in compliance with domestic and international standards.

Looking towards the future, the CRCS is considering the potential impact of the passing into legislation of Bill C-4 on the CRCS programming, in particular relating to the detention monitoring and restoring family links activities.



**Canadian
Red Cross**

**Croix-Rouge
canadienne**

**CANADIAN RED CROSS
2008-2009
ANNUAL REPORT ON
DETENTION MONITORING
ACTIVITIES IN CANADA**

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CANADIAN RED CROSS
2008-2009 ANNUAL REPORT ON DETENTION MONITORING ACTIVITIES

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1. Background

The Canadian Red Cross Society (Red Cross) is a neutral, independent humanitarian organization. Our mission is to improve the lives of vulnerable people in Canada and around the world. The Red Cross offers a variety of humanitarian programs. One such program is Detention Monitoring. This program was established in 1999 in response to the influx of Chinese migrants on Canada's pacific coast and their subsequent detention. At the time, the Canadian government requested the Canadian Red Cross to monitor the treatment and conditions of detainees in detention facilities where these migrants were being held.

The Detention Monitoring Program is structured to monitor the extent to which detaining authorities comply with applicable international and domestic standards. Its role includes advising authorities on compliance issues.

On November 3, 2006, the Canada Border Service Agency ("CBSA") entered into a Memorandum of Understanding ("MOU") with the Canadian Red Cross Society, which mandated the Red Cross to monitor the conditions of persons detained under the Immigration and Refugee Protection Act (IRPA), i.e., immigration detainees. 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". The MOU also requires the Red Cross to provide to CBSA a summary report once annually to identify any discrepancies between CBSA's detention practices and the applicable domestic and international standards. The MOU left open the question as to whether the annual report was to be submitted in written form or orally.

The *May 2008 Report of the Auditor General of Canada* included a sizable section (Chapter 7) on detention and removal of individuals that fall under CBSA's responsibility. In the report, the Auditor General commented that "The Agency signed an updated agreement with the Canadian Red Cross to monitor conditions at its facilities. While the Canadian Red Cross had provided some oral reports to Agency officials on the conditions at its facilities, the Agency has not monitored the extent to which the facilities meet its standards at a national level."¹ Partly in response to the Auditor General's report, CBSA asked the Red Cross to provide written reports on its Detention Monitoring activities.

This report, which covers activities during 2008 and 2009, responds to that request. This practice will continue into the future in the absence of further direction from CBSA.

Overview of Monitoring Activity in 2008 - 2009

According to CBSA statistics, there were 13,571 immigration detainees held in various facilities across Canada in 2008. These facilities include the four federal immigration holding centers operated by CBSA, namely, the British Columbia Holding Center at Vancouver International Airport, the Kingston Immigration Holding Center, Laval Centre

¹ http://www.oag-bvg.gc.ca/internet/English/parl_oag_200805_07_e_30703.html

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de prevention de l'immigration near Montreal and the Toronto Immigration Holding Center as well as provincial and municipal correctional facilities that have sub-contracting arrangements with CBSA.

While the MOU between CBSA and the Canadian Red Cross provides a mandate for the Red Cross to visit all persons detained under IRPA, Red Cross currently only has access to CBSA operated federal immigration holding centers and provincial and municipal correctional facilities in Alberta, British Columbia and the Rivière-des-Prairies facility in Quebec. Access to facilities in Alberta was expected to begin in 2009 at the time of this report, as a result of an MOU signed between CBSA and the Government of Alberta in 2006. The Red Cross is aware that there is work-in-progress by CBSA and other provinces to put agreements in place to regulate the holding of immigration detainees. This will provide the Red Cross with further access to provincial facilities. However, at this time, the Red Cross remains concerned that it cannot currently fulfill its mandate to monitor the detention conditions in all places where immigration detainees are held in Canada.

In 2008 Canadian Red Cross made a total of 20 detention monitoring visits as follows:

British Columbia:

- British Columbia Holding Center was visited seven times.
- Fraser Regional Correctional Center in Maple Ridge was visited twice.
- North Fraser Pre-Trial facility was visited twice.
- Allouette Correctional Center for women was visited once

Ontario:

- Kingston Immigration Holding Center was visited twice.
- Toronto Immigration Holding Center was visited three times.

Quebec:

- Centre de prévention de l'immigration de Laval was visited three times.

In 2009 Canadian Red Cross conducted 25 detention monitoring visits as follows:

Alberta:

- Calgary Remand Center was visited twice.
- Calgary Young Offenders Center was visited once.
- Edmonton Remand Center was visited twice.

British Columbia:

- British Columbia Holding Center was visited twice.
- Fraser Regional Correctional Center was visited five times.
- North Fraser Pre-Trial facility was visited once.
- Allouette Correctional Center for women was visited once.

Ontario:

- Kingston Immigration Holding Center was visited four times.
- Toronto Immigration Holding Center was visited four times.

Quebec:

- Centre de prévention de l'immigration de Laval was visited four times.

There were also numerous communications and meetings with facility management offices, CBSA Headquarters, CBSA regional offices and provincial corrections personnel to discuss detention conditions and the treatment of detainees.

Red Cross Team and Methodology

In its detention monitoring work, Red Cross focused on four areas:

- Facility conditions including, but not limited to, food, medical services, access to recreation/outdoors, access to information and transportation
- treatment by facility staff, contractors and facility population
- access to legal safeguards
- ability to maintain family contact

Where 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.

Red Cross monitoring generally focuses on systems rather than individual cases. This involves understanding the policies, standard operating procedures and mechanisms within which a facility operates, including how staff is trained and how services are provided to the detainees. The aim of monitoring systems rather than individual cases is to maximize the impact of our work by encouraging systemic improvement. This approach benefits all current and future detainees rather than a single individual or family. Occasionally, this process includes the representation of one or more individual detainees, where the affected detainee(s) request(s) such assistance and/or consent (s) to it.

In keeping with Canadian Red Cross methodology, a monitoring visit begins with a meeting with the facility director or his/her designate. Team members are introduced to the facility representative, followed by a short explanation of the Red Cross mandate in the facility as well as a follow up on items from previous visits. The facility representative then provides a general update on the facility population and conditions. This involves some demographic information on the detainees such as the number of detainees by gender and nationality. The visiting team will also ask specific questions to identify particularly vulnerable groups, such as unaccompanied minors, persons identified with mental health concerns and persons held in segregation. Facility representative are also asked about conditions, trends or any overall changes in the population or incidents within the facility.

The Red Cross team proceeds to meet with the detainees. Red Cross representatives will typically present their mandate to a group of detainees, distribute a sheet that explains Red Cross mandate in various languages and invite detainees to speak with team

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representatives if they so wish. Sometimes detainees share issues in a group setting while others request a private interview. After concluding the confidential interviews with detainees, Red Cross representatives will hold a team meeting to consolidate findings, followed by a debriefing with the facility representative. An attempt is then made to validate issues that the Red Cross observed or that the detainees raised. Those issues that are validated, and within the Red Cross mandate, are then further discussed in the team session and documented. If the detainee(s) consent(s), these issues are subsequently raised with the authorities orally with a view to exploring solutions. The Red Cross normally concludes its visit at this juncture. Canadian Red Cross will thereafter continue to monitor how noted concerns are addressed by the authorities. Issues which are beyond the mandate and/or authority of the facility staff will be noted to the Red Cross Detention Monitoring Manager, who will determine the appropriate follow-up.

Internal, confidential Red Cross site visit reports are then prepared. 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. The annual report to CBSA mandated by the MOU then follows. This document embodies the required annual report.

Red Cross visits also include a tour of the facility. Under the MOU, the Red Cross "shall" have access to all parts of the facilities it visits. In most cases, advance notice of this request is made so the facility can logistically prepare for it.

The detention monitoring team typically consists of male and female volunteers and or staff. Teams are accompanied by a health delegate with a medical or nursing background when needed.

Red Cross detention monitoring work is carried out in accordance with the *Canadian Red Cross Detention Monitoring Guidelines*. All detention monitors participate in a detention monitoring training program conducted by the Red Cross. Furthermore, the Guidelines include minimum performance standards for the program as well as reporting guidelines for our teams. New team members are mentored into their work by seasoned monitors.

Relationship with Canada Border Services Agency

Throughout its detention monitoring visits in 2008 and 2009, Red Cross has enjoyed a constructive working relationship with CBSA officials. CBSA officials were open to dialogue with the Red Cross both on a facility and on a regional and headquarter level. The Society had no difficulty in accessing the CBSA administered facilities, speaking with the detainees or communicating and working toward resolution of issues with the authorities. CBSA officials recognised the Red Cross mandate to promote a protective environment for the detainees in their facilities as well as the obligation of the Red Cross to fulfill its role on a neutral and independent basis.

The Red Cross is appreciative of the openness shown by CBSA to its visits and the agency's willingness to address concerns raised both at the facility level as well as on a

regional and national level. In the past year, the Canadian Red Cross has made several representations to the relevant authorities in areas such as access to health care, food, co-mingling of immigration detainees and criminal inmates, access to information about rights and obligations in detention, the detention of minors and family contact within a detention facility. Red Cross has, on several occasions, highlighted the need for enhanced staff training and has also participated in such training to explain the role of the Red Cross and its detention monitoring activities.

In Ontario, the Red Cross appreciates the initiative that CBSA has undertaken to form a working group entitled "Enhancing the Quality of Life for those in Detention". This working group consists of CBSA representatives, Red Cross, UNHCR and NGOs who serve the detainee population. The working group model has been recognized as a best practices model to be repeated across the country in future detention monitoring initiatives. This model improves communication and dialogue among the government and organisations who work with this vulnerable population.

The detention monitoring teams in both Alberta and British Columbia have received a high degree of openness and cooperation from both Corrections in Alberta and British Columbia and CBSA which has had an important impact on the Red Cross ability to fulfill its mandate.

2. PROTECTION ISSUES

As a result of its detention monitoring visits, Red Cross has identified several key protection issues in Canadian detention facilities. In 2010, the Red Cross will continue to focus on these issues. There will be an ongoing dialogue with authorities on local, regional and national levels to explore solutions and alternatives. As an example, the Red Cross and CBSA have already put in place a notification mechanism that will allow the Red Cross Society to be notified as soon as an unaccompanied minor or person with mental health concerns, as defined in our MOU, is detained.

2.1. Children in Detention

According to the statistics received from CBSA, 840 minors were detained under the Immigration and Refugee Protection Act in 2008 across Canada. Approximately 100² of these children were not accompanied by their parents or a legal guardian ("unaccompanied minors"). Most of these minors are detained to permit authorities "to continue an examination". "Removal", "ID" and "admissibility hearings" are other reasons given for the detention of minors. Most minors (83%) were detained in Ontario and many of them held at the Toronto Immigration Holding Center.

² The statistics received from CBSA indicate the total number of unaccompanied minors each month. Since some of these detainees remained in detention from previous months and some were new detentions, it is hard to calculate the exact number of unaccompanied minors in detention. Therefore this figure is an informed estimate.

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Red Cross is concerned with the detention of children because they are particularly vulnerable. They lack physical and emotional maturity and they depend on adults for their livelihood. The care and protection that children require, which would normally be provided by parents, can be further compromised in a detention facility since staff do not have the resources or mandate to provide a suitable environment for children. Yet parental involvement is impossible where parents' movement and actions are restricted. Moreover, children may be negatively impacted by both the detention environment itself as well as their interaction with guards, other detainees, and even their own parents who are under stress due to their detention and uncertainty about the future.

Red Cross has observed challenges with maintaining the family unity inside detention centers. All federal immigration holding centers include a separate wing for men and women. Detained children are often placed with their mothers in the female section of the facility. While there are common areas for the whole family to meet during the day in the Toronto Immigration Holding Center and Centre de prévention de l'immigration de Laval, these areas do not provide an appropriate space for the family to spend time and do activities together. Of immediate concern to the Red Cross is the current arrangement in some facilities when a child is accompanied only by the father. In such cases both male and female children are detained in the male section of the facility. The Red Cross has recommended that alternatives to detention be sought and that, in the short term, an officer be assigned to oversee the child. A female officer should be assigned to oversee a female child.

Children detained without their parents ("unaccompanied minors") present another set of protection challenges. These challenges include a child's need for parental presence and guidance and the absence of educational opportunities. These challenges are exacerbated by the fact that detention facilities are an unsuitable environment for children in the first place. Unaccompanied minors are an especially vulnerable population when they are away from their country of origin, isolated from their families and cut off from other community support systems.

Alternatives to detention should always be explored before placing a minor in detention. However, detaining parent(s) without their children does also present challenges, such as family separation, and can create additional protection problems.

The establishment of the new Refugee Processing Unit at Toronto Pearson Airport has provided an opportunity for Red Cross to observe its effects on reducing avoidable detention of children and/or finding alternatives. The fact that most minors are detained "to continue an examination" supports the feasibility of finding alternatives to their detention. Red Cross has also observed that in British Columbia (and Alberta) minors are detained very infrequently. The Red Cross recommends that CBSA explore the differences in practices across the country and decide on a Canada-wide best practice that takes into account the best interest of the child.

2.2. Mental Health in Detention

The immigration detainee population includes individuals from diverse ethnic, social and religious background. Many of them have gone through traumatic experiences in their country of origin, or as part of their travels to Canada. Others live under stressful conditions here, unaware as to whether they will be allowed to stay or be forced to return home.

The Red Cross recognizes that many immigration detainees are vulnerable persons owing to mental health issues which require a unique suite of support and specialized services. Throughout its visits in 2008-2009, the Red Cross observed detainees with what appeared to be varying degrees of mental health concerns. While some detainees may have had pre-existing psychiatric conditions upon entry to the facility, the symptoms of others may have been triggered or exacerbated by their detention and their uncertain futures. In some cases the Red Cross has found this has led to stricter controls in detention -e.g. administrative segregation- which may in turn worsen the mental health vulnerabilities. The Red Cross is concerned that the current immigration detention system in Canada, is not equipped to provide adequate care to persons with mental health illnesses, and that an inadequate or inappropriate response to mental health symptoms and behaviours may worsen existing problems and increase the prospects of self harm or injury to others.

The Red Cross recognizes the need to conduct more research and analysis in this subject area. The comprehensive mapping of existing services and referral systems available for persons with mental illness would be helpful. The Red Cross should also, working with CBSA, develop a better understanding of how detention facilities can be adapted to accommodate the mental health population to find appropriate solutions.

The Red Cross recommends that CBSA put in place systems to better identify and treat individuals with mental problems in their facilities. Where the detention service has been sub-contracted by CBSA to a correctional facility, communication between CBSA and this facility is essential. Proper and systematic record keeping of mental health issues is needed. The collection of accurate and consistent mental health data must be conducted in a manner that respects the privacy of individuals. Such data would be used to determine the scope of the issue, monitor trends and identify systematic solutions. Identifying mental health issues at the facility level may require training for facility personnel, especially medical staff. Absent such training, management of this population is impaired and novel approaches, such as the development of referral mechanisms or alternatives to detention would prove futile.

In 2006, the United Nations High Commissioner for Refugees Representative to Canada led a series of consultations on mental health and detention. These consultations included roundtable discussions with government agencies, non-governmental organisations as well as refugee claimants themselves. This process led to the development of a set of key recommendations. Canadian Red Cross will continue to monitor the implementation of these recommendations and collaborate with UNHCR, other agencies and researchers. The Red Cross will also work with CBSA to explore how to implement these

recommendations.

2.3. Co-mingling immigration detainees with criminal populations

Immigration detention is a form of administrative detention since these detainees are generally not charged with a crime. The basis for the incarceration rests on non-criminal grounds, yet immigration detainees are mixed with criminally charged or convicted populations in correctional facilities. This practice is known as "co-mingling".

There has been an increase in the use of correctional facilities for immigration holds as immigration detention has grown in Canada over the last years. In 2009, the number of immigration detainees held in non-CBSA facilities was 50% of the total population. The practice of co-mingling contradicts international standards such as the 1999 UNHCR Guidelines on the Detention of Asylum Seekers.³ Canadian Red Cross perceives several protection issues inherent in the practice of co-mingling.

First, the systems and standards within pre-trial (remand) or correctional facilities do not always conform to CBSA detention standards. They do not always consider the unique circumstances and needs of immigration detainees or reflect the higher standards required in the treatment of this non-criminal population. Moreover, the existence of two different sets of standards for two different populations within the same facility presents challenges for the facility management.

Secondly, placing immigration detainees in the same environment as criminally charged or convicted inmates can be extremely stressful for immigration detainees without a criminal background. This holds true especially for refugee claimants, many of them displaced from their country of origin as a result of traumatic experiences. While immigration detention is not intended to be punitive in nature, being placed in a facility for criminal detention presents the same carceral experience for those held in correctional facilities.

Finally, co-mingling immigration detainees – many of whom are without a criminal background – with criminally charged or convicted inmates, and sometimes violent criminals, exposes immigration detainees to a hostile environment that involves the risk of physical and verbal abuse or injury.

Housing immigration detainees, who are neither charged nor convicted of a crime, in either a pre-trial (remand) or correctional centre is inherently undesirable. This is especially so for those without any criminal background.

³ The UNHCR Guidelines state at Guideline 10 (iii): "[T]he use of separate detention facilities to accommodate asylum-seekers. The use of prisons should be avoided. If separate detention facilities are not used, asylum-seekers should be accommodated separately from convicted criminals or prisoners on remand. There should be no co-mingling of the two groups".

Red Cross recognizes that steps are undertaken by provincial authorities to limit the effects of co-mingling on the immigration detainee population. In British Columbia, efforts have been made to segregate the populations as much as possible by holding immigration detainees in a separate wing of the facility. However complete segregation is not always possible due to overcrowding or low numbers of immigration detainees. In addition, co-mingling challenges often present themselves during times of transport to and from the facility.

In 2009-10 Canadian Red Cross has conducted a research study on the scope of co-mingling in Canada, the impact it has on immigration detainees as it relates to the four areas monitored by the Red Cross (conditions, treatment, family contact and legal safeguards), and alternatives to this practice. The study will be internal to the Canadian Red Cross and its results will be shared in a separate communication with CBSA.

2.4. Provincial Issues

2.4.1 Alberta

Family Contact:

Phone systems that are established within the correctional facilities in Alberta for inmates to use to call their families experience technological challenges on a regular basis. As a result several detainees have had challenges making contact with family members in other countries due to these technological issues. Red Cross has discussed this issue with the head of the specific Correctional facilities after it was brought to our attention. This has resulted in the facilities working toward changing their systems so they are more effective. For example, the Calgary Remand Centre has switched to using phone cards. Further monitoring of this issue will occur.

Legal Safeguards:

On more than one occasion it has become apparent through discussions with the detainees that they are unclear as to the legal process and how to access legal services once detained. Red Cross monitoring teams have raised this with the Correctional Facility Program Directors to better understand where the gap of information is occurring. It has been suggested that the facilities provide a one page document that is strictly for IRPA detainees to ensure they receive the necessary information for reaching a lawyer or for clarifying the legal process right away. This has been agreed to by the Correctional facilities in both Edmonton and Calgary. Continued follow-up to determine if this has occurred and is effective will be required.

An issue that has been brought up in each visit by detainees is the fact that those held in the Calgary Remand Centre must travel to Edmonton for their IRB hearings. This is a long day, as it takes three hours for the drive to Edmonton, the time it takes for the hearing to occur and another three hour trip back to Calgary. The detainees are shackled for this entire time and may be riding with convicted criminals who are in-between

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sentences. This experience is very hard on those who do not have a criminal background of any sort and increases their stress and anxiety. It was recommended that the use of video conferencing may eliminate the stress and anxiety by limiting the full day experience of being shackled and reducing the time that is needed for attending the IRB hearing. This is a challenge for the facilities as it is an IRB issue. The technology is already a part of the facility systems; however, IRB has not made this a priority.

Co-mingling:

Both the Calgary Remand Centre and the Edmonton Remand Centre were built with population maximums of approximately 350 to 400 inmates. However, due to increases in criminal activity over time, these centres house about three times more than their capacities allow. This has resulted in establishing double and triple bunked cells. It has also limited the ability of Corrections to organize IRPA detainees in the same units or cells. The continual movement of inmates requires constant rotation of inmates so that they are not always in a triple bunked situation. This too has prevented immigration detainees to be housed together. In the end the immigration detainees may be bunked with a charged criminal when they are not charged with a crime.

The Alberta Corrections has plans to build a larger facility in Edmonton that will house approximately 1500 inmates at once. The intent is to have this facility completed by 2012. This will mean that this issue will continue for another two years.

2.4.2. British Columbia**Legal Guarantees: Access to Legal Representation**

Recent cuts to Legal Aid in British Columbia have apparently caused an increase in the number of immigration detainees. Several detainees indicated that lawyers had declined to represent them and that they were without adequate or any legal representation. Red Cross is concerned with these recent developments and is continuing to investigate this issue.

Language: Access to information and systems

Information is transmitted to immigration detainees either orally or in writing in English and French at the British Columbia Holding Center (BCHC). It is transmitted in English in BC Corrections facilities. The fact that key information is not provided in the first and sometimes the only language of those being detained is problematic and is at the root of several other issues.

In the BC Corrections facilities, because the facility rules and regulations are presented only in English those who have minimal to no understanding of the English language enter the facility not knowing their rights or obligations. This puts them at risk of breaking the rules unintentionally. In addition, detainees often express confusion about how to access many of the systems such as phone usage, canteen, making a medical visit

request, the complaint mechanism, filling out forms, their right to an interpreter, their right to access religious material and services in their language or a library. Some also have difficulty reading the signage and learning about the possibility of video conferencing for IRB hearings or references to Legal Aid and the Ombudsman. Detainees are often not aware that they can request their belongings such as money and key documents from CBSA via BC Corrections. BC Corrections is very willing to work together with CBSA on finding a solution to this issue.

Canadian Red Cross recommends that BCHC make available to detainees' written information to explain the reasons for their detention by which they are being detained and the IRPA process. This information should be available in those languages that are prevalent within a significant proportion of the detainee population. While in both the BCHC and in BC Corrections facilities, efforts are made to access facility colleagues who may be able to speak another language to provide interpretation when required, availability is haphazard and subject to chance. Professional and independent interpretation services should be available 24 hours a day and 7 days a week, for those languages most prevalent among detainee populations, to ensure appropriate communication between detainees and the authorities. This is particularly important for emergency situations, medical dialogues or any other sensitive issues that require communication between the detainee and authorities.

Sri Lankan Marine Arrival Response

Canadian Red Cross monitored the conditions of the 76 Sri Lankan refugee claimants that were detained on 17 October 2009 following the interception by Canadian authorities of a foreign ship found off the B.C. coast. Canadian Red Cross monitoring teams were able to provide several recommendations to CBSA concerning the detention conditions for the detainees. The management of Fraser Regional Correctional Centre made a strong effort to accommodate the new arrivals to the facility, which included providing access to rice cookers, coffee machines and Tamil newspapers. Concerns were noted in the areas of access to legal services, handling of personal belongings, access to interpreters and access to information about the legal process. Canadian Red Cross made representation at both the local and national level to discuss our findings and recommendations.

2.4.3. Ontario

Designated Representative for Unaccompanied Minors

Unaccompanied minors may require a designated representative in addition to a legal representative during their immigration proceedings. In Ontario, an individual under the age of 16 is considered to be a minor, while the age of majority under federal law is 18. For detained children under 18 years of age, CBSA notifies the Children's Aid Society to act as the designated representative. However, identifying a designated representative for detained minors between the ages of 16 and 17 has not been a consistent practice. CBSA, Red Cross and McCarthy-Tetrault, a Toronto law firm who offers pro bono services, initiated a process for McCarthy-Tetrault to act as the designated representative for this

group of detainees. Red Cross will work with CBSA and McCarthy-Tetrault to clarify the notification and appointment process and to ensure the consistent delivery of this essential legal service to detainees.

Access to Outdoors

Canadian Red Cross received several complaints and raised concerns with the management of the Toronto Immigration Holding Center in 2008-2009 regarding access to the outdoors. Both CBSA's internal standards⁴ and international standards⁵ stipulate that immigration detainees and prisoners should have access to the outdoors for a minimum of one hour per day. The policy at the Toronto Immigration Holding Center was until late 2009 to either let all detainees go outdoors or not to let anyone do so. This policy stemmed from a lack of sufficient staff to cover detainees in the two locations they operate. By the end of 2009, CRC was pleased to note that CBSA had resolved this issue by increasing staff levels at the facility that allowed for detainees to access the outdoors according and in compliance with the standards outlined above.

Staff sensitivity training

CRC has made recommendations for increased staff training at the Toronto Immigration Holding Center as part of several recommended measures aimed at addressing credible complaints from detainees about disrespectful behaviour by security staff towards detainees. CRC has been in a dialogue with TIHC facility management about the development of a cultural sensitivity training together with UNHCR. Once finalised, the training curriculum will be presented to the security company for their approval.

Similar sensitivity training by CRC and UNHCR was delivered during the reporting period in British Columbia and Kingston, Ontario and is also being planned in other parts of the country.

Kingston

In 2008, the single detainee held at the Kingston Immigration Holding Center chose to decline Red Cross' offer to hold confidential meetings. It is therefore difficult for the Red Cross team to draw any certain conclusions about the conditions in the facility without benefiting from the detainee's perspective. However, the Red Cross raised concerns that the detainee was the only person held in the facility and the negative impact this may have on his well-being.

Overall conditions in the facility did improve in 2008 as a result of CBSA and Correctional Services Canada having more clearly defined their respective responsibilities for the management of it. The Canadian Red Cross was also pleased to

⁴ National Standards and Monitoring Plan for the Regulation and Operation of Canada Border Services Detention Centers

⁵ UN Standard Minimum Rules for the Treatment of Prisoners (1955) and UNHCR Guidelines on Detention of Asylum Seekers (1999).

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participate in two training sessions for the correctional officers at the Immigration Holding Center.

In early 2009, the detainee who had been held at the facility since its opening was released from the Kingston Immigration Holding Center. Later that year, another detainee, previously released on bail, returned to the facility. The Red Cross was able to hold several confidential conversations with him and the facility management about his detention conditions. Our monitoring teams noted the detainee's concern that he does not have access to an independent ombudsman, such as the Correctional Investigator. Canadian Red Cross made several representations to CBSA about the protection gap that exists for immigration detainees held in federal facilities due to the lack of an independent ombudsman with authority to investigate complaints and issues that arise at the facility.

2.4.4. Quebec

Accommodation of Families

All federal immigration holding centers include a separate wing for men and women in compliance with domestic and international standards. Detained children are often placed with their mothers in the female section of the facility. In cases where the whole family has been detained, this segregation can limit families' ability to spend time together throughout the course of their detention. Particularly in Centre de prévention de l'immigration de Laval, the father can only see his children during visiting hours in the visitors' room (or the yard) and during meals in the cafeteria. The open visitors' room and limited visitor hours are not optimal to pursue a normal family relationship. At times of stress and uncertainty, families need each other and Red Cross recommends that a more appropriate space for families be provided in the Quebec facility. Our team has been informed that the immigration holding center will be moved to another location soon. The Red Cross is hopeful that the new facility will allow for more meaningful family contact for families detained in the province.

Dog Searches

Another issue of concern in Quebec has been unannounced dog searches in Laval Centre de prevention de l'immigration. Throughout their monitoring visits our teams have found that dog searches take place in the living quarters of detainees at unexpected hours. Most detainees have found this practice to be humiliating. As part of our dialogue with the facility authorities, our teams has been informed that the searches are aimed at confiscating drugs. Red Cross appreciates the authorities' duty to enforce the law in the facilities and take necessary steps to prevent illegal activity. However, since detainees already go through a search at the day of entry to the facility, Red Cross monitors has found the dog search practice as an extreme measure that invades detainees' privacy unnecessarily. To ensure detainees' dignity while upholding the law in the facility, Red Cross recommends that authorities consider other solutions to address the issue.

Transportation to access medical services

CRC has made several representations to the facility management of the Laval Centre de prevention de l'immigration concerning the use of handcuffs (wrist-hip-ankle) when transferring detainees outside the facility for medical appointments or hearings. Several detainees consider this treatment humiliating and have chosen not to seek medical treatment as a result. During a regular monitoring visit Red Cross monitoring teams witnessed a woman who was having a miscarriage be handcuffed and shackled as she required medical treatment outside the facility. This was raised with the Director of the facility who agreed that in this particular case the outcome was unfortunate. CRC has been informed by facility management and the Chief of the Canadian Corps Commissionaires that this procedure when transporting detainees is necessary for the safety of the guards and to avoid flight risk. CRC would urge CBSA to adopt security policies that allow for individual assessments of security risks on a case by case basis and use discretion as to how such restrictive measures as used.

3. RECOMMENDATIONS

3.1 The Red Cross recommends that CBSA explore the differences in detention of children practices across the country and decide on a Canada-wide best practice in the best interest of the child. Canadian Red Cross recommends that alternatives to children's detention be found and families are kept together throughout their immigration process. If children must be detained, in the interest of maintaining family unity and decreasing the adverse affects of detention on children, it is important that detention facilities have an area where the family can stay together securely and have privacy. The Red Cross has been informed that Centre de prevention de l'immigration de Laval will be relocating to a new facility soon. We strongly recommend that family contact be a key consideration during the construction or purchase of the new immigration holding center in Quebec.

3.2. To tackle the mental health issues for immigration detainees, Canadian Red Cross recommends that CBSA establish a system to recognise and document mental health issues at the facility level, and seek appropriate treatment and referral systems. Alternatives to detention for these individuals should also be explored.

3.3. Canadian Red Cross recommends that CBSA establish better oversight over immigration detainees held in provincial or municipal correctional facilities in line with CBSA's internal standards. When the detention of immigration holds in a correctional facility cannot be avoided, Red Cross recommends that immigration detainees and criminally charged or convicted inmates be kept in separate sections of the correctional facility. Red Cross recognizes the need to internally conduct a more thorough analysis of the co-mingling issue in Canada and its impact on detainees. Red Cross will continue to dialogue with the authorities on finding alternatives to this practice. The findings of the co-mingling study will be presented to CBSA in a separate report.

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3.4. Canadian Red Cross recommends that diversity, cultural and sensitization training to the plight of IRPA detainees is included in the training requirements for CBSA and sub-contracted facility staff.

3.5. Canadian Red Cross recommends that at the British Columbia Holding Center, key information about the immigration process and facility rules be made available to detainees in several languages, especially the ones most commonly spoken by the detainee population. This is the existing practice in other CBSA managed holding centers.

3.6. Canadian Red Cross recommends that alternatives are explored (including a review of the practices at other CBSA holding centers) to substitute for unannounced dog searches for the purposes of confiscating drugs at the Laval Centre de prevention de l'immigration.

3.7 Canadian Red Cross recommends that CBSA's security policies allow for individual assessments of security risks when transporting detainees outside the facility and use discretion in its use of handcuffs and other restraining measures.