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**Joint Submission by Human Rights Watch and the University of Toronto's International Human Rights Program to the Committee on the Rights of the Child's Consideration of Canada's fifth and sixth periodic reports**

*March 2020*

We write in advance of the 87<sup>th</sup> pre-session of the Committee on the Rights of the Child relating to Canada's compliance with the Convention on the Rights of the Child. This submission focuses on the immigration detention of children in Canada.

**Detention of Children (Articles 2, 3, 9 and 37)**

In the period under review, Canada started to make progress in its treatment of immigration detainees, and demonstrated a willingness to address deeply embedded issues within the immigration detention system. Nevertheless, Canada's treatment of children in the context of immigration detention continues to violate its obligations under the Convention on the Rights of the Child.

Among the positive developments in Canada's immigration detention regime are the following:

1. In November 2017, the Minister of Public Safety issued a Ministerial Direction on "Minors in Canada's Immigration Detention System,"<sup>1</sup> and the Canada Border Services Agency (CBSA) issued a "National Directive for the Detention or Housing of Minors."<sup>2</sup> The directives acknowledged that the best interests of the child must be a primary consideration in detention-related decisions in which a child is affected. The directives also emphasized the need to preserve family unity in the context of such decisions.
2. CBSA has taken important steps toward addressing systemic issues within the immigration detention regime. CBSA has embarked on several new programs through the National Immigration Detention Framework to improve transparency, alternatives to detention, and detention infrastructure.<sup>3</sup> In 2018, CBSA implemented its Alternatives to Detention (ATD) program, which provides officers with an expanded set of tools – including community case management and supervision, electronic monitoring and voice reporting – in order to facilitate the release of more individuals from immigration detention.<sup>4</sup>

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<sup>1</sup> Public Safety Canada, "Ministerial Direction to the Canada Border Services Agency: Minors in Canada's Immigration Detention

<sup>2</sup> Canada Border Services Agency, "National Directive for the Detention or Housing of Minors," (September 26, 2019) <https://www.cbsa-asfc.gc.ca/security-secure/detent/nddhm-dndhm-eng.html>.

<sup>3</sup> Canada Border Services Agency, "National Immigration Detention Framework," (February 14, 2019), <https://www.cbsa-asfc.gc.ca/security-secure/detent/nidf-cndi-eng.html>.

<sup>4</sup> Canada Border Services Agency, "Alternatives to detention: Questions and Answers," (July 24, 2018) <https://www.cbsa-asfc.gc.ca/security-secure/detent/qa-qr-eng.html>.

3. The number of children in detention has decreased, from 232 in fiscal year 2014-15, to 118 in 2018-19.<sup>5</sup> However, the number of children held in Quebec has sharply increased,<sup>6</sup> and it remains unclear how many children are separated from their detained parents across the country because CBSA has not collected or published this data.
4. In 2019, Canada amended its Immigration and Refugee Protection Regulations (IRPR) to add “the best interests of a directly affected child” to the list of factors to be considered in detention-related decisions. The IRPR now also provides a list of factors that must be considered when determining the best interests of the child.<sup>7</sup>
5. In 2019, the Immigration Division of the Immigration and Refugee Board – the tribunal that conducts detention review hearings to determine whether immigration detainees are released from detention – updated its Guideline on Detention to reflect the regulatory amendment.<sup>8</sup>

Despite these positive steps, immigration detainees in Canada continue to suffer significant human rights violations. In particular, children continue to be detained or separated from their detained parents.<sup>9</sup> Even where there are no grounds for detention, children (including Canadian citizens) may be “housed” in detention in order to avoid separating them from their detained parents.<sup>10</sup> Family separation has become increasingly common since 2019, particularly in Quebec.<sup>11</sup> There is no limit prescribed in law to the length of detention, and as such, detainees have no way to ascertain how long they will spend in detention. Canada remains one of the few countries in the world without a legislatively prescribed limit to the length of detention.

The Immigration and Refugee Protection Act and its Regulations do not have any provisions for independent monitoring of detention facilities, and Canada has not ratified the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, which allows for independent monitoring by the United Nations. Furthermore, there is no independent ombudsperson to whom immigration detainees can complain about conditions of confinement. CBSA remains the only public safety agency in Canada without an independent civilian oversight body.<sup>12</sup>

A punitive culture persists within the immigration detention system, and it is enabled by a series of systemic issues that can only be meaningfully addressed through comprehensive legislative, regulatory, and policy amendments.

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<sup>5</sup> Canada Border Services Agency, “Annual Detention Statistics – 2012-2019,” (August 20, 2019), <https://www.cbsa-asfc.gc.ca/security-securite/detent/stat-2012-2019-eng.html>.

<sup>6</sup> Ibid.

<sup>7</sup> Immigration and Refugee Protection Regulations (SOR/2002-227), s 248 and s 248.1 [IRPR].

<sup>8</sup> Immigration and Refugee board of Canada, “Guidelines Issued by the Chairperson, Pursuant to paragraph 159(1)(h) of the Immigration and Refugee Protection Act,” (April 1, 2019), <https://irb-cisr.gc.ca/en/legal-policy/policies/Pages/GuideDir02.aspx>.

<sup>9</sup> Hanna Gros & Yolanda Song, “*No Life for a Child: A Roadmap to End Immigration Detention of Children and Family Separation*,” International Human Rights Program (2016), [https://ihrp.law.utoronto.ca/utfl\\_file/count/PUBLICATIONS/Report-NoLifeForAChild.pdf](https://ihrp.law.utoronto.ca/utfl_file/count/PUBLICATIONS/Report-NoLifeForAChild.pdf); Canadian Council for Refugees, “The CCR calls on Canada to end the immigration detention of children,” (August 26, 2019), <https://ccrweb.ca/en/media/end-detention-children-2019>.

<sup>10</sup> Canada Border Services Agency, “Statement by the Canada Border Services Agency on housing of Canadian children in immigration holding centres,” (February 25, 2017), [https://www.canada.ca/en/border-services-agency/news/2017/02/statement\\_by\\_thecanadaborderservicesagencyonhousingofcanadianchi.html](https://www.canada.ca/en/border-services-agency/news/2017/02/statement_by_thecanadaborderservicesagencyonhousingofcanadianchi.html).

<sup>11</sup> Canadian Council for Refugees, “The CCR calls on Canada to end the immigration detention of children,” (August 26, 2019), <https://ccrweb.ca/en/media/end-detention-children-2019>.

<sup>12</sup> Catharine Tunney, “CBSA won’t be getting independent oversight as bill dies in the Senate,” CBC News (June 21, 2019), <https://www.cbc.ca/news/politics/cbsa-bill-oversight-goodale-1.5185025>.

## Relevant Issues

Since fiscal year 2014-15, more than 850 children have spent time in Canadian immigration detention.<sup>13</sup> Although the number of children in detention has decreased, the average length of time children spend in detention has increased, peaking in 2018-19 at 18.6 days.<sup>14</sup> Moreover, the vast majority of children in detention in 2018-19 – 79 percent – were younger than 12 years old.<sup>15</sup> As noted above, there are significant regional variations: in 2018-19, of the children who were detained or “housed” in detention, the vast majority were in Quebec.<sup>16</sup> That year, children who were detained in Quebec spent an average of three weeks in detention,<sup>17</sup> and the number of children “housed” in detention in Quebec more than tripled from the previous year.<sup>18</sup> According to CBSA, this is partly the result of high numbers of irregular border crossings in Quebec<sup>19</sup>; however, regional variations in the application of immigration detention policy and law have been a long-standing issue.<sup>20</sup> Importantly, family separation has also become an increasingly common practice in Quebec, where children are separated from at least one detained parent.<sup>21</sup>

Children are subject to the same legal scheme that governs adult immigration detention, although adjudicators are required to consider the best interests of the child.<sup>22</sup> Accordingly, children may be placed under detention orders for the same reasons as adults.<sup>23</sup> Children may also be “housed” in detention even where there are no grounds for detention, in order to avoid separating them from their detained parents.<sup>24</sup> This subset of de facto detainees are subject to the same detention conditions as those under formal detention orders, and may include Canadian citizen children.<sup>25</sup> In 2018-19, of the 118 children who spent time in immigration detention, 103 were “housed” in detention rather than formally detained.<sup>26</sup> Children who do not accompany their detained parents in detention are separated from their parents, and may be at risk of being transferred to child welfare

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<sup>13</sup> Canada Border Services Agency, “Annual Detention Statistics – 2012-2019,” (August 20, 2019), <https://www.cbsa-asfc.gc.ca/security-securite/detent/stat-2012-2019-eng.html>.

<sup>14</sup> Ibid.

<sup>15</sup> Ibid.

<sup>16</sup> Ibid. See also Canadian Council for Refugees, “The CCR calls on Canada to end the immigration detention of children,” (August 26, 2019), <https://ccrweb.ca/en/media/end-detention-children-2019>.

<sup>17</sup> Ibid.

<sup>18</sup> Ibid.

<sup>19</sup> Ibid.

<sup>20</sup> Canadian Council for Refugees, “The CCR calls on Canada to end the immigration detention of children,” (August 26, 2019), <https://ccrweb.ca/en/media/end-detention-children-2019>; Immigration and Refugee Board of Canada (IRB), *Report of the 2017 / 2018 External Audit for Detention Reviews*, (2018), <https://irb-cisr.gc.ca/en/transparency/reviews-audit-evaluations/Pages/ID-external-audit-1718.aspx>; Paloma van Groll & Hanna Gros, “We Have No Rights,” International Human Rights Program (2015).

<sup>21</sup> Canadian Council for Refugees, “The CCR calls on Canada to end the immigration detention of children,” (August 26, 2019), <https://ccrweb.ca/en/media/end-detention-children-2019>.

<sup>22</sup> Immigration and Refugee Protection Act, SC 2001, c 27, s 60 [IRPA].

<sup>23</sup> Immigration, Refugees, and Citizenship Canada, “ENF 20 Detention,” (November 20, 2018) at s 5.11, <https://www.canada.ca/content/dam/ircc/migration/ircc/english/resources/manuals/enf/enf20-det-en.pdf>.

<sup>24</sup> Immigration, Refugees, and Citizenship Canada, “ENF 20 Detention,” (November 20, 2018) at s 5.12, <https://www.canada.ca/content/dam/ircc/migration/ircc/english/resources/manuals/enf/enf20-det-en.pdf>.

<sup>25</sup> Hanna Gros & Yolanda Song, “No Life for a Child”: A Roadmap to End Immigration Detention of Children and Family Separation, International Human Rights Program (2016), [https://ihrp.law.utoronto.ca/utfl\\_file/count/PUBLICATIONS/Report-NoLifeForAChild.pdf](https://ihrp.law.utoronto.ca/utfl_file/count/PUBLICATIONS/Report-NoLifeForAChild.pdf); Hanna Gros, *Invisible Citizens: Canadian Children in Immigration Detention*, International Human Rights Program (2017), [https://ihrp.law.utoronto.ca/utfl\\_file/count/PUBLICATIONS/Report-InvisibleCitizens.pdf](https://ihrp.law.utoronto.ca/utfl_file/count/PUBLICATIONS/Report-InvisibleCitizens.pdf); Canada Border Services Agency, “CBSA Comments – Invisible Citizens: Canadian Children in Immigration Detention,” February 3, 2017. This document was provided in an email from Canada Border Services Agency on February 4, 2017. In CBSA’s comments, the Agency confirmed that, “the national detention standards apply to minors detained or housed in an IHC.”

<sup>26</sup> Canada Border Services Agency, “Annual Detention Statistics – 2012-2019,” (August 20, 2019), <https://www.cbsa-asfc.gc.ca/security-securite/detent/stat-2012-2019-eng.html>.

authorities.<sup>27</sup> It is not clear how many children are separated from their detained parents, as CBSA has not collected or published this data.<sup>28</sup>

In at least one Immigration Holding Centre (IHC), children are generally held with their mothers in the “family wing,” while their fathers are held in a separate “male wing.”<sup>29</sup> Children who are detained outside of a region served by an IHC – that is, outside the regions of Toronto, Montreal, and Vancouver – may be placed in provincial youth correctional facilities, which are not designed to accommodate immigration detainees.<sup>30</sup>

While the legislation provides immigration detainees access to regular detention review hearings at the Immigration Division of the Immigration and Refugee Board, the tribunal does not have jurisdiction over the site and conditions of detention because IRPA is silent on these crucial elements of the right to liberty. In other words, the law provides no mechanism for immigration detainees to challenge violations of their right to residual liberty. In the absence of legislation, CBSA has interpreted its power to enforce detention to include “unfettered discretion to detain migrants wherever and however it sees fit.”<sup>31</sup>

Detention conditions are woefully inadequate and unsuited for children. Immigration detention facilities resemble medium-security prisons, with strict rules and regimented daily routines, set times for meals, visitations, times for waking up in the morning and going to sleep at night.<sup>32</sup> There is constant surveillance by guards and through security cameras, and there is virtually no privacy.<sup>33</sup> Access to doctors and mental health counselling is limited, and children receive inadequate education and poor nutrition.<sup>34</sup> Recreational activities are generally sedentary, mobility is severely restricted, detainees have limited access to any outdoor space at the facilities, and children rarely get the opportunity to socialize with other peers their age.<sup>35</sup> Essentially, children are deprived of an environment where they can develop normally.

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<sup>27</sup> Canada Border Services Agency, “Information for people detained under the Immigration and Refugee Protection Act,” (2015), <https://www.cbsa-asfc.gc.ca/publications/pub/bsf5012-eng.pdf>.

<sup>28</sup> Canada Border Services Agency, “Annual Detention Statistics – 2012-2019,” <https://www.cbsa-asfc.gc.ca/security-secureite/detent/stat-2012-2019-eng.html>.

<sup>29</sup> Hanna Gros & Yolanda Song, “No Life for a Child”: A Roadmap to End Immigration Detention of Children and Family Separation, International Human Rights Program (2016), [https://ihrp.law.utoronto.ca/utfl\\_file/count/PUBLICATIONS/Report-NoLifeForAChild.pdf](https://ihrp.law.utoronto.ca/utfl_file/count/PUBLICATIONS/Report-NoLifeForAChild.pdf); Hanna Gros, *Invisible Citizens: Canadian Children in Immigration Detention*, International Human Rights Program (2017), [https://ihrp.law.utoronto.ca/utfl\\_file/count/PUBLICATIONS/Report-InvisibleCitizens.pdf](https://ihrp.law.utoronto.ca/utfl_file/count/PUBLICATIONS/Report-InvisibleCitizens.pdf). See also, Canadian Red Cross Society, *Annual Report on Detention Monitoring Activities in Canada, Confidential* (2012–2013) (obtained through access to information request by IHRP, A-2014-12993) at 20.

<sup>30</sup> Canada Border Services Agency, “Annual Detention Statistics – 2012-2019,” (August 20, 2019), <https://www.cbsa-asfc.gc.ca/security-secureite/detent/stat-2012-2019-eng.html>. See also Canadian Red Cross Society, *Annual Report on Detention Monitoring Activities in Canada, Confidential* (2012–2013) (obtained through access to information request by IHRP, A-2014-12993) at 20; Canada Border Services Agency, “Minors in detention – by detention facility,” November 4, 2015, (obtained through access to information request by IHRP, A-2015-15845/MZM).

<sup>31</sup> Siena Anstis, Joshua Blum, and Jared Will, “Separate but Unequal: Immigration Detention in Canada and the Great Writ of Liberty” (2017) 63:1 McGill Law Journal 1 at 12). CBSA Manager of Detentions Unit in the Inland Enforcement Program Management Division John Helsdon confirmed this position in *Brown v Canada (Citizenship and Immigration)*, 2017 FC 710, and in *Ali v Canada (Attorney General)*, 2017 ONSC 2660.

<sup>32</sup> Hanna Gros & Yolanda Song, “No Life for a Child”: A Roadmap to End Immigration Detention of Children and Family Separation, International Human Rights Program (2016), [https://ihrp.law.utoronto.ca/utfl\\_file/count/PUBLICATIONS/Report-NoLifeForAChild.pdf](https://ihrp.law.utoronto.ca/utfl_file/count/PUBLICATIONS/Report-NoLifeForAChild.pdf); Hanna Gros, *Invisible Citizens: Canadian Children in Immigration Detention*, International Human Rights Program (2017), [https://ihrp.law.utoronto.ca/utfl\\_file/count/PUBLICATIONS/Report-InvisibleCitizens.pdf](https://ihrp.law.utoronto.ca/utfl_file/count/PUBLICATIONS/Report-InvisibleCitizens.pdf).

<sup>33</sup> Ibid.

<sup>34</sup> Ibid.

<sup>35</sup> Ibid.

Although the applicable legislation and policy guidelines provide for special considerations regarding children in the context of immigration detention, in practice, the best interests of the child are inadequately accommodated. This is the case whether or not children are subject to formal detention orders. Children who are not themselves subject to formal detention orders, but whose parents are detained, are caught between living in detention with their parents as de facto detainees or separating from them. Where detained parents elect to spare their children from detention, they may be released to child welfare authorities.<sup>36</sup>

### *Legal Framework and International Law Violations*

Children under formal detention orders have access to the same legal process as adults; namely, detention review hearings. Adjudicators must consider the best interests of the child in these detention review hearings; however, this is not a primary factor in the analysis, but merely one of several factors.<sup>37</sup> Failure to make consideration of the best interests of the child a primary consideration is a fundamental violation of the United Nations Convention on the Rights of the Child.<sup>38</sup>

Unlike formally detained children, de facto detained children do not have access to detention review hearings because they are not legally recognized as being detained.<sup>39</sup> For this reason, children who accompany their parent(s) or legal guardian(s) in detention cannot have their best interests considered in their own detention review hearings.<sup>40</sup> Instead, the best interests of de facto detained children – as well as children separated from their detained parents – are to be taken into account in the detention review hearings of their parent(s) or legal guardian(s).<sup>41</sup> In practice, however, many adjudicators do not apply this lesser safeguard consistently.<sup>42</sup>

International bodies have been resolute about the immigration detention of children.

The Committee on the Rights of the Child urged that, “the detention of a child because of their or their parent’s migration status constitutes a child rights violation and always contravenes the principle of the best interests of the child.”<sup>43</sup> The United Nations General Assembly, the United Nations Working Group on Arbitrary Detention, and the Inter-American Court of Human Rights have all reaffirmed that the migration status of a child or their parent is insufficient to justify the detention of a child.<sup>44</sup> In fact, the United Nations High Commissioner for Refugees has noted that

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<sup>36</sup> Canada Border Services Agency, “Information for people detained under the Immigration and Refugee Protection Act,” (2015), <https://www.cbsa-asfc.gc.ca/publications/pub/bsf5012-eng.pdf>.

<sup>37</sup> IRPA, s 60; IRPR, s 249.

<sup>38</sup> United Nations Committee on the Rights of the Child, General Comment No. 14 on the right of the child to have his or her best interests taken as a primary consideration (art. 3, para. 1), 62<sup>nd</sup> Sess, UN Doc CRC/C/GC/14 (May 29, 2013).

<sup>39</sup> Hanna Gros, *Invisible Citizens: Canadian Children in Immigration Detention*, International Human Rights Program (2017), [https://ihrp.law.utoronto.ca/utfl\\_file/count/PUBLICATIONS/Report-InvisibleCitizens.pdf](https://ihrp.law.utoronto.ca/utfl_file/count/PUBLICATIONS/Report-InvisibleCitizens.pdf), at 35.

<sup>40</sup> Ibid.

<sup>41</sup> *BB and Justice for Children and Youth v. Minister of Citizenship and Immigration* (August 24, 2016), Toronto IMM-5754-15 (Federal Court); IRPR ss 248(f), 248.1.

<sup>42</sup> Hanna Gros, *Invisible Citizens: Canadian Children in Immigration Detention*, International Human Rights Program (2017), [https://ihrp.law.utoronto.ca/utfl\\_file/count/PUBLICATIONS/Report-InvisibleCitizens.pdf](https://ihrp.law.utoronto.ca/utfl_file/count/PUBLICATIONS/Report-InvisibleCitizens.pdf).

<sup>43</sup> UN Committee on the Rights of the Child, *Report of the 2012 Day of General Discussion on The Rights of the Child in the Context of International Migration* (September 28, 2012), at para 78.

<sup>44</sup> United Nations General Assembly, Third Committee, Migrant children and adolescents, 69<sup>th</sup> Sess, UN Doc A/C.3/69/L.52/Rev.1 (19 November, 2014) at para 3; United Nations Working Group on Arbitrary Detention, Report of the Working Group on Arbitrary Detention: UN Basic Principles and Guidelines on Remedies and Procedures on the Right of Anyone Deprived of Their Liberty to



children “should in principle not be detained at all.”<sup>45</sup> The United Nations Special Rapporteur on the Human Rights of Migrants has called on states to “preserve the family unit by applying alternatives to detention to the entire family.”<sup>46</sup> Similarly, the United Nations Special Rapporteur on Torture concluded that, “the imperative requirement not to deprive the child of liberty extends to the child’s parents, and requires the authorities to choose alternative measures to detention for the entire family.”<sup>47</sup>

In September 2017, the UN Committee on the Elimination of Racial Discrimination recommended that the Canadian government “immediately end the practice of detention of minors.”<sup>48</sup> In December 2019, the Committee sent a follow-up letter to Canada noting that the government’s response to this recommendation was “unsatisfactory.”<sup>49</sup> The Committee expressed regret that the federal government “does not prohibit the use of immigration detention of children who, in some cases, continue to be held in detention.”<sup>50</sup>

### *Mental Health Evidence*

The detrimental effects of immigration detention on children’s mental health have been extensively documented in Canada and around the world.<sup>51</sup> Studies confirm that detained children experience “high rates of psychiatric symptoms, including self-harm, suicidality, severe depression, regression of milestones, physical health problems, and post-traumatic presentations.”<sup>52</sup> Younger children in detention also experience developmental delays and regression, separation anxiety and attachment issues, and behavioral changes, such as increased aggressiveness.<sup>53</sup> Even brief periods of confinement can be acutely stressful and traumatic for children,<sup>54</sup> and the mental health impact can last long after release.<sup>55</sup> Importantly, research shows that family separation also has severe detrimental psychological effects on children.<sup>56</sup>

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Bring Proceedings Before a Court, 30th Sess, UN Doc. A/HRC/30/37 (July 6, 2015) at para 113; Rights and Guarantees of Children in the Context of Migration and/or in Need of International Protection (August 19, 2014), Advisory Opinion OC-21/14, Inter-American Court of Human Rights at para 154.

<sup>45</sup> United Nations High Commissioner for Refugees, *Detention Guidelines: Guidelines on the Applicable Criteria and Standards relating to the Detention of Asylum-Seekers and Alternatives to Detention* (2012), at para 51.

<sup>46</sup> UNGA, *Report of the Special Rapporteur on the human rights of migrants*, at paras 40 and 72(h); United Nations General Assembly, *Report of the Special Rapporteur on the human rights of migrants*, Jorge Bustamante, 11th Sess, UN Doc A/HRC/11/7 (May 14, 2009) at para 62 (“Migration-related detention of children should not be justified on the basis of maintaining the family unit”).

<sup>47</sup> United Nations General Assembly, *Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment*, Juan E. Méndez, 28th Sess, UN Doc A/HRC/28/68 (March 5, 2015) at para 80.

<sup>48</sup> Committee on the Elimination of Racial Discrimination CERD/C/CAN/CO/21-23, “Concluding observations on the combined twenty-first to twenty-third periodic reports of Canada,” Recommendation 34(b), (September 13, 2017), [https://tbinternet.ohchr.org/\\_layouts/15/treatybodyexternal/Download.aspx?symbolno=CERD/C/CAN/CO/21-23&lang=En](https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CERD/C/CAN/CO/21-23&lang=En).

<sup>49</sup> Letter from the Committee on the Elimination of Racial Discrimination to the government of Canada, (December 13, 2019) [https://tbinternet.ohchr.org/Treaties/CERD/Shared%20Documents/CAN/INT\\_CERD\\_FUL\\_CAN\\_40898\\_E.pdf](https://tbinternet.ohchr.org/Treaties/CERD/Shared%20Documents/CAN/INT_CERD_FUL_CAN_40898_E.pdf).

<sup>50</sup> Ibid.

<sup>51</sup> See Rachel Kronick, Cécile Rousseau and Janet Cleveland, “Asylum-Seeking Children’s Experiences of Detention in Canada: A Qualitative Study” (2015) 85:3 *American Journal of Orthopsychiatry* 287 at 290; Ann Lorek et al., “The mental and physical health difficulties of children held within a British immigration detention center: A pilot study” (2009) 33:9 *Child Abuse & Neglect* 573; Zachary Steel et al., “Psychiatric status of asylum seeker families held for a protracted period in a remote detention centre in Australia” (2004) 28:6 *Australian and New Zealand Journal of Public Health* 527.

<sup>52</sup> Ibid.

<sup>53</sup> Ibid.

<sup>54</sup> Rachel Kronick, Cécile Rousseau and Janet Cleveland, “Asylum-Seeking Children’s Experiences of Detention in Canada: A Qualitative Study” (2015) 85:3 *American Journal of Orthopsychiatry* 287 at 292.

<sup>55</sup> Ibid, at 291-292.

<sup>56</sup> Ibid, at 290-291.

Researchers from McGill University reported findings from interviews with 20 families, including children ranging from infants to teenagers, who were held in the Toronto and Laval IHCs.<sup>57</sup> The study found that children who were detained with their parents were severely affected by detention. Children reacted to confinement with “extreme distress, fear, and a deterioration of functioning,” exhibiting a range of symptoms both during detention and after release.<sup>58</sup> Parents reported that, while in detention, their children became aggressive and commonly exhibited symptoms of separation anxiety and depression, as well as difficulty sleeping and loss of appetite.<sup>59</sup> Following release from detention, children continued to experience emotional distress for months, including separation anxiety, selective mutism, sleep difficulties and post-traumatic symptoms.<sup>60</sup> Several children developed a fear of symbols of authority (such as uniforms, police vehicles and institutional buildings) and their academic performance deteriorated.<sup>61</sup>

*Human Rights Watch recommends that the Committee ask the government of Canada:*

- When will the government of Canada establish an independent body/ombudsperson responsible for overseeing and investigating the Canada Border Services Agency, to whom immigration detainees can hold the government accountable?
- What concrete measures has the government of Canada taken to ensure that the Immigration Division of the Immigration and Refugee Board has jurisdiction over the site and conditions of detention?
- When will the Canada Border Services Agency publish statistics regarding children who are separated from their detained parents?
- Are Canada Border Services Agency officers completing assessments of the best of interests of the child in each case where a child is impacted by a detention-related decision, including cases involving alternatives to detention? If so, are those assessments available for disclosure under the Privacy Act?
- Can the Canada Border Services Agency and the Immigration Division confirm that officers and adjudicators are comprehensively trained and fully equipped to make assessments regarding the best interests of the child, as required by international law standards, to implement the relevant sections of IRPA and the Regulations?
- When will the Canada Border Services Agency begin disclosing the best interests of the child assessments completed by its officer on each case where a child is affected by a detention-related decision?
- Can the government of Canada guarantee that children will no longer be detained in segregation and in correctional facilities?

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<sup>57</sup> Ibid, at 288.

<sup>58</sup> Ibid, at 291–292.

<sup>59</sup> Ibid, at 291.

<sup>60</sup> Ibid, at 291–292.

<sup>61</sup> Ibid, at 291.

- What further alternatives to detention does the government of Canada plan to implement in order to end all detention of children and avoid family separation?
- What concrete measures is the government of Canada taking to address the mental health impact of immigration detention on children and families?

*Human Rights Watch recommends the Committee call upon the government of Canada to:*

- Create an independent body/ombudsperson responsible for overseeing and investigating the Canada Border Services Agency (CBSA), and to whom immigration detainees can hold the government accountable (akin to the federal Office of the Correctional Investigator);
- Expedite the current consultations with provincial and territorial governments so as to be able to accede to the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment as soon as possible, which would allow for international inspection of all sites of detention;
- Ensure that where children are detained, they have regular access to adequate in-person healthcare professionals, social workers, and other care providers with expertise in working with children;
- Create a national committee composed of representatives of government, mental health professionals, civil society, including persons with disabilities, and lawyers to develop detailed policy recommendations on how to provide services to immigration detainees that have disabilities, including psychosocial disabilities or mental health conditions;
- Ensure that all non-citizens are able to access essential healthcare services, including mental health services and medication, in the community; and
- Amend existing laws and regulations in the following ways:
  - Revise section 60 of IRPA to clarify that the best interests of the child should be a primary consideration in all detention-related decisions affecting children, and that the principle of the best interests of the child entails children should not be detained, housed in detention, or separated from their detained parent(s);
  - Make clear that, in all decisions related to the deprivation of liberty of non-citizens for administrative reasons, the government should use the least restrictive measures consistent with the management of a non-criminal population;
  - Revise section 58 of IRPA to require the Immigration Division to order release of an immigration detainee where detention has been unreasonably lengthy and it is not of a definite duration;



- Revise section 54 of IRPA to establish that the Immigration Division of the Immigration and Refugee Board has jurisdiction over the site and conditions of detention, including immigration detainees' health and safety;
- Revise IRPA and/or introduce new regulations to prohibit under any circumstances the solitary confinement, segregation, or isolation of children in immigration detention. In order to avoid co-mingling of unaccompanied minors with non-family adults, unaccompanied children should not be detained;
- Create policy guidelines to increase access to quality education, recreational opportunities, medical services, and appropriate nutrition within immigration detention facilities. However, the amelioration of detention conditions and services for detainees must not diminish efforts to reduce the scope of immigration detention and to eliminate child detention;
- Revise IRPR and/or introduce new regulations to require conditions of release imposed on children and families with children to be the least restrictive conditions suitable in the circumstances, and only imposed where unconditional release is inappropriate. Conditions of release should be reviewed regularly to determine whether they continue to be necessary in the circumstances;
- Continue engaging with community organizations to create non-custodial, community-based alternatives to detention and family separation, and make these available in law and in practice for children and families with children. Community-based alternatives should allow children to reside with their family members in the community;
- Expand and increase the transparency of existing third-party risk management programs and develop other community-based programs in coordination with nongovernmental organizations and civil society partners;
- Provide individualized case management to children and families with children who are benefiting from community-based programs;
- Introduce regulations and/or policy guidelines requiring Canada Border Services Agency officers to inform the Refugee Law Office, Office of the Children's Lawyer, Justice for Children and Youth, the Children and Youth Advocate, and similar organizations across Canada, as soon as a child is placed in a detention center or separated from a detained parent; and
- Introduce regulations and/or policy guidelines requiring Immigration Division adjudicators, and Canada Border Services Agency officers and subcontractors to receive quality, comprehensive and ongoing training on human rights, diversity, mental health, cultural sensitivity, and viable alternatives to detention.