



# **Incarcerating the Innocent: Inside Canada's Immigration Detention Centres**

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## **ABSTRACT**

Canada, widely perceived as a renowned leader in immigration, has become subject to condemnation from international and human rights organizations for its use of immigration holding centres, where migrants are detained by the Canadian Border Services Agency (CBSA). Using both academic sources and recounts by those who experienced detention, this paper examines the actions of the CBSA and argues that they, and the Canadian state as a whole, are perpetuating legal violence towards migrants and asylum seekers. These findings highlight the pressing need to end the regular use of migrant detention in Canada and support arguments made by human rights organizations for community-based alternatives.

## Introduction

In the past twenty years, Canada has intensified border security through tightening immigration regulations and the introduction of the Canadian Border Services Agency in 2003 (Mountz 2020, 173). Once regarded as a pioneer in immigration and refugee resettlement, the expansion of Canada's immigration system has transformed the country into a violator of human rights law, receiving condemnation by the United Nations and other international organizations. As a result, it has not only become increasingly difficult for migrants and asylum seekers to enter Canada legally, but they also face harsh consequences once they arrive. In some cases, this includes forcible stationing in an immigration detention centre or a provincial prison (Amnesty International 2021).

Canada is among several other Western nations that have begun intensifying border security. The United Kingdom, Australia, and the United States are all examples of countries that have implemented legal violence into immigration processes. Migrants are often treated as lawbreakers, with accounts of being handcuffed and shackled, despite not having committed any crimes (Amnesty International 2021). The public is unaware of these experiences, and Canada continues to be regarded as a leader in refugee resettlement and immigration (Mountz 2020, 170).

This paper seeks to highlight the legal violence that emerges through Canada's policies regarding the immigration process. It argues that the intensification of border security and the introduction of detention centres have begun treating innocent migrants, asylum seekers,

and refugees like felons. This questions the validity of Canada's claim that they are an 'immigrant welcoming' country, as there are evident contradictions to this notion. It will also explain the detrimental effects of Canada's detention system on those who must endure it, and how Canada's actions violate international human rights laws. First, I will outline the broader intensification of immigration procedures in the Global North. Next, I will provide an overview of Canada's detention centres and explain the detrimental effects Canada's actions have on migrants. Finally, I will highlight the international condemnation Canada has received regarding its detention centres.

## Global Intensification of Border Security

Migrant paths to the Global North have increasingly become more difficult amidst border security initiatives taken by countries (Mountz 2020, 9). Although there are no explicit laws against the number of people who can make refugee/asylum claims in these countries, limiting avenues for immigration increases the risk of statelessness and unauthorized entry (Mountz 2020, 9). Countries that have historically been home to many migrants — including Canada, the United States, Australia, and the United Kingdom — have intensified border security in recent years. This includes the cross-border sharing of intelligence and data on people seeking asylum or refugee status, and the adoption of other states' border security policies (Mountz 2020, 11). The increasing security efforts can be linked to the rise of migrants who lacked authorization in the 1990s and terror attacks in the early 2000s — especially 9/11 (Mountz 2020,

11).

Following 9/11 and throughout the Chrétien, Martin, and Harper governments, Canada introduced several measures that intensified its immigration process. The Immigration and Refugee Protection Act (2002), the Multiple Border Strategy between Canada and the U.S. (2003), the Safe Third Country Agreement (2004), and Protection Canada's Immigration System Act (2012) have all been formative developments that have structurally altered the immigration process in Canada (Mountz 2020, 168-171). The Canadian Border Services Agency was established in 2003, detaining border enforcement from Citizenship and Immigration Canada (Mountz 2020, 173). These policies allowed for the introduction of detention centres, stricter visa requirements, and limited options for entry into Canada (Mountz 2020, 173). It follows a broader theme of Global North countries tightening immigration policies, and can be partially understood as a symptom of the ways in which migrants and immigrants have been portrayed in the media.

Media coverage has played a key role in intensifying these events and securitizing immigration. Boat arrivals in Global North countries were documented in a manner that heightened anxiety towards migrants by leveraging citizens' fears toward 'unknown groups' entering their countries. Following the increase in European refugees, the media commonly depicted them as "a tidal wave of desperate people fleeing poverty and warfare at home trying to enter the elusive European El Dorado" (Colombo 2017, 162-163). Using terms such as 'flooding,' 'undocumented,' and 'irregular arrivals,'

the media can deepen preconceived notions that the West holds towards migrants, legitimizing their perception as an invasive species that needs to be stopped (Mountz 2020, 189; Colombo 2017, 163). These directly apply to how immigrants and migrants are perceived by the Global North, and how these countries justify their border security and perpetuation of legal violence.

### **Overview of Canada's Detention Centres**

The Immigration and Refugee Protection Act (IRPA), enacted in 2002, allows for the detention of migrants (Ward 2019, 567). As per federal guidelines, the Canadian Border Services Agency (CBSA) can detain migrants and asylum seekers if: "(i) a person's identity has not been established; (ii) a person has been deemed unlikely for an examination, admissibility hearing [otherwise known as 'flight risk']; and (iii) someone is deemed a threat to public safety or inadmissible on security grounds" (Furman 2016, 196-197). Most migrants are detained on the grounds of being a 'flight-risk,' with less than six percent of detainees being perceived as a risk to the public (Furman 2016, 197). Although IRPA and Canada's Immigration and Refugee Protection Regulations outline that only "non-citizen permanent residents" and "foreign nationals" can be detained, detention centres have included children as well (Ward 2019, 563-564). It is difficult to assess how many children have been detained due to the CBSA's refusal to disclose numbers in facilities outside of the Toronto Immigration Holding Centre (Ward 2019, 562). Children are not directly given detention orders

themselves; rather, they accompany their parents, who have chosen to bring their children with them rather than put them in provincial child protective services and be separated (Furman 2016, 195). This means that even children who are Canadian citizens can be placed in detention if their parent is foreign-born and not a Canadian citizen (Ward 2019, 564).

During the 2019–2020 fiscal year, the CBSA detained 8,825 migrants (Amnesty International 2021). Around two-thirds of detainees were held in Immigration Holding Centers (IHC), and approximately 2,000 were sent to provincial jails (Amnesty International 2021). The IHCs operate similarly to medium-security prisons — they are surrounded by fences and include guard protection (Furman 2016, 195). During the pandemic, the number of those incarcerated in provincial jails increased exponentially because the CBSA held roughly half of the detainees in prisons as a result of COVID-19 restrictions in the IHCs (Amnesty International 2021). In prisons, migrants face dangerous conditions, and many have reported witnessing or being subject to violence during their detention time (Amnesty International 2021).

During detention, migrants must adhere to rigid schedules and surveillance and experience a lack of stimulation (Furman 2016, 199). Detention centres use handcuffs, shackles, prisoner suits, and solitary confinement as measures of control over detainees (Hasiloglu 2022). A report from the Red Cross concluded that the conditions of both prisons and IHCs were poor, highlighting “inadequate support for children and people suffering from mental health issues

and inadequate space for all” (Mountz 2020, 187).

The Canadian government does not have a maximum detention time for migrants and immigrants; the average length of detention was 13.9 days, yet there have been many cases of people spending months in detention centres (Hasiloglu 2022). Amnesty International found that over 300 detainees were held for over a year in 2016 (Amnesty International 2021). The most extended period for detention was eleven years; — the detainee in question suffered from mental health conditions and was even put in solitary confinement during this time (Amnesty International 2021). Canada is one of the few Global North countries that has not set a maximum detention time — human rights groups have criticized this policy, because it allows for indefinite detention without trial.

In 2018, the CBSA implemented the Alternatives to Detention (ATD) Program, following the National Immigration Detention Framework in 2016 (Gidaris 2020, 1). The ATD program aims to “provide risk-based, nationally consistent programming to individuals deemed suitable for release from detention” (Gidaris 2020, 1). These alternative programs include electronic monitoring (i.e., ankle monitors) and voice reporting (Gidaris 2020, 2). While these implementations are a step forward from incarcerating innocent people, they remain coercive and controlling measures. These methods are proposed as alternatives that promote freedom and autonomy for migrants awaiting immigration hearings, but they enforce immense surveillance on detainees. Specifically, with electronic monitoring, migrants are physically

restricted in their homes rather than detention centres.

### **Canadian Border Security’s Effects on Migrants and Children**

Canada’s immigration system and detention centres have had an adverse effect on migrants. Many stories from those who endured the process are incredibly concerning, further questioning the ethicality of such practice. Sixteen people have died in detention centres in the past twenty-two years, and many have experienced lasting psychological impacts (Jung 2022; Amnesty International 2021). Those who have experienced Canadian detention centres recount the intensification or emergence of depression, anxiety, post-traumatic stress disorder, and suicidal ideation (Amnesty International 2021; Ward 2019, 566). Many migrants have experienced traumatic events before entering Canada, including rape, physical assault, and torture. To then be placed in detention exacerbates the effects of previous distressing experiences, and invokes past trauma (Furman 2016, 196). Given that most detainees do not understand why they are incarcerated — seeing that they did not commit any crimes — the detention experience can be exceedingly harmful. While these psychological effects are more prevalent in migrants detained for prolonged periods, studies have found that those detained for shorter periods also develop long-lasting mental health problems (Gidaris 2020, 3). The lack of agency given to migrants further perpetuates their frustration and anger in detention.

Children are one of the most impacted groups by the immigration detention system.

They are aware that they are in detention, question why they are detained, and worry about their future (Furman 2016, 205). Children who have experienced detention are reported to experience an increase in severe social isolation, developmental delay, reduced academic performance, and a deterioration of physical and mental health (Ward 2019, 568). These feelings can also increase hostility, sleep disturbances, and a loss of appetite among detained children (Ward 2019, 569). The effects attributed to detained children are due to the experience of detention and the family separation that comes with it. Many children are separated from either one or both parents in detention. These children were reported to worry incessantly about the absent parent, often asking about the segregated parent (Furman 2016, 201). One child was described as refusing meals in detention, asking the food to be given to their separated father (Furman 2016, 201). Moreover, children who were not detained but separated from incarcerated parents were also adversely affected; these children are reported to experience social difficulties, challenges in school, and increased attachment to parent-like figures, such as teachers (Furman 2016, 204).

Following detention, migrants have also faced problems when integrating into communities. Release from detention is followed by several other barriers, including language and culture blocks, finding housing and employment, and financial challenges (Gidaris 2020, 5). Instructed to wear electronic monitoring devices, migrants must navigate these everyday challenges alongside “feelings of embarrassment, social isolation, and humiliation ampli-

fied by wearing EM devices in private and public spaces” (Gidaris 2020, 5). ATD programs make it so that the detention system’s frustration, humiliation, and overall adverse effects follow migrants outside the physical realm of a detention centre. It signifies that migrants continue to be surveyed by authority forces even in their communities.

### **International Condemnation of the Canadian Detention System**

Due to its detention centre system, Canada has been subject to international condemnation by human rights organizations and the United Nations. Canada’s continued perpetuation of legal violence through detention centres violates (i) the Universal Declaration of Human Rights, (ii) the International Covenant on Economic, Social, and Cultural Rights, (iii) the Convention of the Rights of a Child, and (iv) United Nations Declaration of the High-Level Dialogue on International Migration and Development (Ward 2019, 566). Detaining children is illegal under international law, particularly the Convention on the Rights of a Child, which explains that all legislative and administrative matters, including children, should include the child’s best interest (Ward 2019, 564). The Canadian Council for Refugees has expressed that placing children in detention is not in the child’s best interest, and Canada should enforce legal measures to prohibit the act (Ward 2019, 574). Both the United Nations Committee on the Rights of the Child and the Canadian Council for Refugees have condemned Canada’s actions, specifically their “illegal and unethical treatment of persons in immigration detention, both adults and

children” (Ward 2019, 566). These views have further been supported by the End Immigration Detention Network, and the Global Detention Project, based on the adverse psychological effects detention has on detainees, the wrongful criminalization of immigrants, and the traumatic conditions in detention facilities and prisons (Gidaris 2020, 10).

Canada has also received criticism based on its decision not to have a limit for detention. The United Nations Human Rights Commission has been vocal about opposing Canada’s decision. It states that Canada must set a reasonable time limit for how long someone can be in detention (Hill & Malik 2022).

There is no reason why these migrants are sent to detention centres or provincial jails on such a large scale (Amnesty International 2021). Migrants are treated like criminals, despite not having committed any crimes. It is essential to highlight that the immigration system is meant to be an administrative procedure. Migrants face detention for administrative purposes, yet are incarcerated and face prison-like conditions, including solitary confinement (Amnesty International 2021). This punitive treatment is, therefore, a form of legal violence — the Canadian government and CBSA exert power and punish migrants under the pretense of ‘administrative’ procedures. Migrants and children of migrants are being discriminated against because of qualities out of their control, including immigration status and country of origin (Ward 2019, 568).

Human rights groups have also been vocal about finding solutions to detainment. During the pandemic, the CBSA released an unprece-

mented number of detainees, highlighting that it is possible to have an immigration system that does not involve detention (Amnesty International 2021). During the pandemic, detainees dropped to 1,600 in IHCs, with many being sent into the community under certain conditions while awaiting immigration status (Bureau 2022). In 2022, British Columbia and Nova Scotia terminated their contracts with the CBSA regarding incarcerating migrants in provincial jails, proving that alternative motions can be taken (Bureau 2022).

Alternatives are possible — they worked during the pandemic. Community-based options are favoured by human rights advocates rather than detention, especially considering the massive cost of detention centres and prisons (Hasiloglu 2022). Human rights groups have called for ‘rights-affirming’ alternatives that allow migrants agency and freedom while they await their immigration status (Jung 2022). Instead of funding incarceration, that money could be allocated to education, language classes, mental health support, daycare, retraining initiatives, and legal fees for migrants (Hasiloglu 2022).

A more comprehensive understanding is also needed of the invisible form of violence perpetuated by the media regarding how both authorities and the public view migrants and asylum seekers. The way these groups are depicted — often using keywords and dramatic headlines to instil fear and concern — allows for the normalization of detention centres and legal violence against immigrant groups (Mountz 2020, 189).

## **Conclusion**

Although characterized as an administrative procedure, Canada’s immigration system has developed into a human rights violation, perpetrating legal violence against migrants. Not only are migrants and immigrants detained and treated as prisoners, but there is also no legal limit to how long Canada can detain someone. Migrants, including children, experience increased anxiety, depression, and suicidal ideation after having experienced detention. This is due to the poor quality of life in IHCs and prisons, separation from family members, lack of agency and autonomy, and the overall frustration as to the reason for their detention. Canada has been the recipient of condemnation and criticism by international organizations, including the United Nations, for their violations of international human rights law.

Canada is not the only Global North country to have intensified their immigration process; the United States, Australia, and the United Kingdom have all enacted more aggressive border security in recent years. This results from the increased number of migrants, terrorist attacks, and the negative portrayal of migrants and immigrants in the media. However, this does not excuse their actions. Immigration securitization in Global North countries is inappropriate, given that migrants are not violating laws, but are treated as incarcerated members. Alternatives are possible; intense immigration security is only a recent phenomenon. Instead of detention centres, opting for community-based alternatives that do not restrict and punish migrants is seen as



a more equitable option for this administrative procedure.

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