Working Group on Arbitrary Detention: Preliminary Findings from its visit to Canada (13 to 24 May 2024)

Introduction

At the invitation of the Government of Canada, the United Nations Working Group on Arbitrary Detention conducted an official visit to Canada from 13 to 24 May 2024. The Working Group was represented by Matthew Gillett (New Zealand), Ganna Yudkivska (Ukraine), and Priya Gopalan (Malaysia), accompanied by staff of the Office of the United Nations High Commissioner for Human Rights.

The Working Group first visited Canada in 2005, approximately 20 years before this second visit of 2024. The Working Group expresses its gratitude to the Government of Canada for its invitation to undertake the country visit and for its cooperation. During the visit, the Working Group met with officials of the following Federal authorities: Public Safety Canada, Global Affairs Canada, Department of Justice Canada, Canadian Heritage, Women and Gender Equality Canada, Employment and Social Development Canada, Correctional Service of Canada, Parole Board of Canada, Canada Border Services Agency, Public Health Agency of Canada, the Canadian Human Rights Commission, and the Office of the Correctional Investigator. It also met with members of Parliament and authorities in the provinces of Ontario, Alberta, British Columbia, and Quebec. The Working Group recognizes the numerous stakeholders from civil society and interviewees who shared their perspectives on the arbitrary deprivation of liberty. The Group thanks all of them for the information and assistance they provided.

These observations constitute the Working Group's preliminary findings from its country visit. They will serve as a basis for future deliberations between the members of the Working Group at its forthcoming sessions in Geneva. The Working Group will submit its report to the UN Human Rights Council in September 2025.

During the country visit, the Working Group was provided access to a range of facilities. While it was largely able to conduct its work without restriction, occasional limitations did impede the Working Group. The Working Group went to 7 federal, 6 provincial, 2 municipal, and 2 Indigenous facilities. These included correctional facilities (both men's and women's at the federal and provincial level), police stations, holding centres for migrants, youth detention centres, Indigenous NGO housing, and mental health facilities. It confidentially interviewed around 103 persons deprived of their liberty. The Working Group expresses its appreciation to the Federal and Provincial Governments for the cooperation it received during the country visit.

1. Good practices and positive developments

The Working Group welcomes the legal, regulatory and practical reforms introduced in Canada since its 2005 country visit. It notes in particular the following positive practices:

1.1. Arrest procedure

The Canadian Criminal Code and the Charter of Rights and Freedoms set out protections governing arrests. The Working Group learned that the procedures appear to be followed in most instances and excessive use of force by arresting officers is relatively rare. While these are broadly positive trends, the Working Group notes that any deviation from arrest procedures or excessive force risks causing arbitrary detention. It encourages the Government of Canada to ensure uniform adherence to protections governing arrests.

1.2. Youth Justice

On youth justice, the Working Group notes the significant decrease in total numbers of youths incarcerated in recent years. Given the potentially enduring impact of detention on a young person's life, the successful reduction of this metric is welcome. However, significant numbers of youths continue to be detained, and the Working Group learned of human rights concerns in this respect, including the imposition of adult sentences on youths, confinement in isolated conditions, and the occasional lack of appropriate rehabilitative measures.

1.3. Alternatives to detention

The Working Group learned of regulatory reforms and principles which have assisted to reduce rates of detention in several respects. The principle of restraint requires sentencing judges to prioritize a range of non-carceral alternatives to detention. Restorative justice mechanisms are used in some instances, along with alternative pathways, diversionary programs and community justice programs, all of which contribute to lessening the use of detention. The Working Group encourages the Canadian authorities to expand the use of, and funding for, such initiatives.

2. Main Findings

Canada has robust human rights guarantees under its laws, as set out in the Canadian Charter of Rights and Freedoms. It also has a strong judiciary, which protects the rule of law. Nonetheless, the Working Group notes that shortcomings in the implementation of this regulatory framework continue to risk arbitrary detention occurring in a range of circumstances, particularly in relation to Indigenous Peoples, groups facing racial discrimination and other marginalized groups, including persons detained in migration centres, mental health facilities, and with substance abuse conditions. The Working Group was concerned at the lack of readily available disaggregated data at the federal and provincial levels regarding offending rates, incarceration rates, sentencing levels, and other relevant metrics, which are necessary to develop targeted strategies to remove any forms of discrimination. It calls on Canada to redouble its efforts to redress these shortcomings and reinforce the human rights of all persons under its jurisdiction.

At the international level, the Working Group notes that Canada has enacted the Declaration on the Rights of Indigenous Peoples of 2007. It calls on Canada to ratify the Optional Protocol to the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment of 1984 and the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families of 1990, and put into place the requisite domestic laws.

2.1. Criminal Justice

2.1.1. Arrest and bail procedure

The Working Group, having interviewed a significant number of detainees about the circumstances of their arrest and received a wide range of materials, is satisfied that in vast majority of cases procedures are adhered to and arrestees are informed about both the reasons of their arrests and their rights. Furthermore, the Working Group welcomes information that the police normally do not resort to excessive force during arrests. The Criminal Procedure generally allows for suspects to be detained no longer than 24 hours before seeing a judge. This short period of time facilitates rapid access to judicial controls, reducing the risk of arbitrary detention.

Detention decisions are typically based on assessing the flight risk, reoffending risk, and, more rarely, concerns like public safety or potential harm to the justice system's reputation, such as in terrorism cases. Regarding bail, despite the guarantee of the right not to be denied bail without just cause, inefficiencies and systemic issues continue to impact the process. The Group welcomes the requirement that courts impose "the least onerous form of release". It equally welcomes legislative measures aimed at reducing the over-reliance on sureties and cash bail, which has decreased the reliance on sureties and increased the imposition of program supervision in several provinces.

Despite these changes, it appears that many individuals are released with problematic bail conditions, which are difficult to comply with, especially for vulnerable individuals. These breaches often lead to revocation of bail, thus criminalizing otherwise non-criminal behavior, and fueling a vicious cycle of re-arrests and detentions. Furthermore, this systemic problem discourages many accused individuals from requesting bail, as they would prefer to accrue credit for the pre-trial period instead of risking additional charges. The Working Group appreciates the judiciary's growing readiness to adapt bail conditions for Indigenous Peoples. It also invites the authorities to avoid unnecessary criminalization of bail breaches and to address unique challenges faced by different groups at risk. For this, tailored reforms are essential to mitigate disparities.

2.1.2. Access to legal assistance

The Working Group learned that a variety of legal aid schemes operate across Canada. Typically, detainees are granted access to legal counsel via telephone immediately following their arrest. The Working Group welcomes that free legal services are generally provided to indigent detainees. In some instances, detainees who raised concerns about ineffective legal assistance were able to have their lawyer replaced. However, the Working Group also learned of difficulties contacting lawyers.

As articulated by the Supreme Court of Canada in R. v. Sinclair (2010), police are prohibited from interrogating a detainee until they have had a reasonable opportunity to consult with a lawyer. This provision, however, does not extend to allowing a lawyer's presence during police interrogations (except for young offenders where a lawyer's presence is mandatory). The Group has been made aware that this sometimes results in detainees being subjected to persistent police questioning post-initial legal consultation, despite invoking their right to silence. The Group observes that the absence of a lawyer's physical presence during police interviews compromises the detainees' defence rights and strongly recommends that questioning be suspended as soon as detainees assert their right to silence. The Working Group further welcomes video-recording of all police interviews and emphasizes that the records should be available for a trial court whenever requested.

2.1.3. Plea bargaining

During their visit, the Working Group identified significant issues with the plea-bargaining system, which is prevalent with over 90% of cases resolved by guilty plea. This system, essential for managing the financial and operational demands of the justice system, raises critical ethical and legal concerns. The Group highlighted that plea bargaining risks undermining Charter rights by by-passing due process protections expected in criminal trials, particularly for unrepresented accused who can enter guilty pleas.

The Working Group learned with concern that prosecutors often strategically introduce multiple charges, some of which may be excessive. This allows the prosecution to offer concessions in plea negotiations by dropping charges. Such practices may place undue pressure on the accused and exacerbate power imbalances. Accused often opt for plea bargaining over a full trial to avoid

significant pre-trial delays and a longer period of uncertainty compared to accepting a known, shorter sentence. More stringent regulations and transparency in plea bargaining practices are required, alongside stronger protections for unrepresented defendants. The Group concludes that while plea bargaining reduces judicial workload and costs, it requires careful ethical oversight to ensure fairness and protect all parties' rights within the criminal justice system.

2.1.4. Rehabilitation and reintegration into society

Recidivism remains a crucial challenge for detention. Canada's community supervision system plays a critical role in the reintegration of offenders into society. Programmes in correctional facilities designed to foster pro-social behaviors and skills assist successful reintegration. However, challenges remain, particularly in ensuring effective rehabilitation and support for paroled offenders, many of whom face displacement from their original communities. This geographic dislocation often leaves them without support networks, complicating reintegration and increasing recidivism risks. Furthermore, many interviewed detainees initially released under community supervision faced a lack of any community involvement in their reintegration process.

The Justice Centre Model piloted by the Ontario Provincial authorities appeared to be a positive example of increasing alternatives to detention. Co-developed with communities, these centres take a holistic approach addressing health, employment and social security concerns alongside the offending, and have led to significant reductions in incarceration and recidivism. The Working Group also learned about Indigenous Courts in certain provinces. Adequate funding for all alternative institutions is imperative. The Working Group strongly advocates for more comprehensive efforts to reduce recidivism, including intensifying support in critical areas such as housing, health care access, educational opportunities, and employment assistance.

2.2. Conditions in detention including structured intervention units and special confinement

Regarding conditions in detention, the Working Group observed positive practices and received information that violence by prison guards against detainees is atypical of the carceral culture. All detention facilities had programs in place for sentenced persons to try to rehabilitate them for life after detention, though the adequacy of these programs varied, particularly as programs were not typically available for remand prisoners due to the unknown length of their stay in detention. Most prisons had video link rooms to facilitate court appearances and some had video screens in cell areas permitting frequent virtual family visits. This increased access to virtual visits is welcome but should not replace in-person meeting opportunities. Minimum security facilities were accommodating, with external work options available for some detainees, increasing the chances of a successful transition from detention to release into the community.

However, throughout Canadian provincial correctional facilities, untried prisoners on remand share units with convicted prisoners. Moreover, some prisons, especially provincial facilities, were overcrowded, sometimes with a third detainee sleeping on the floor next to the toilet, in a two-person cell, and prisoners lacked activities to keep them occupied. In some facilities, particularly men's, serious violence between inmates and hospitalizations were frequent. Gangs are present in many units, putting pressure on detainees housed with them to join or face persecution. These conditions pressure untried detainees to plead guilty in order to move to different facilities. Women's facilities sometimes lack proper separation between higher and lower risk profile prisoners and those with psychosocial disabilities.

In some federal and provincial prisons, detainees are regularly kept locked in their cells for long periods, including over weekends. Staff shortages in some facilities lead to prisoners being deprived of access to open air for extended periods, occasionally exceeding a month. A frequent complaint was collective lockdowns for the actions of individual prisoners, which sometimes result in long periods without prisoners being afforded their usual time out of the cells. This also sees the individual prisoners considered responsible for the collective lockdowns being subjected to severe beatings as a form of retribution by their fellow inmates.

The Working Group learned of detainees who were trying to "be good" to reduce maximum-security rankings. There were also repeated offenders, whom correctional officers said were "known" to them, which increases the risks of a negative security assessment. The Working Group is concerned by the use of opaque security classification assessments, which rely heavily on correctional officers' discretion introducing space for discrimination. It recommends transparent collection of data, analysis and public reporting on the impact of correctional decision-making, particularly in relation to Indigenous Peoples and other marginalized groups. The Working Group received information about deaths in custody, including the extremely high suicide and attempted suicide rates amongst Indigenous detainees, and the acute need for mental health medication and support in certain instances. Detention can exacerbate psychosocial disabilities, and the Working Group calls on the authorities to ensure that treatment is available to those detainees in need.

The Working Group was told that solitary confinement is no longer utilised in Canada. In prisons that were visited, this seems to have been replaced by regimes of special confinement, often termed SIUs. When visiting these units, the Working Group was concerned that SIUs and special confinement regimes can result in detainees being isolated and deprived of interpersonal contact. It also received information about individuals who had not left their cell in days. Although detainees in these conditions are in theory afforded 2 hours of contact with other humans each day, this was sometimes fulfilled by a short conversation through a meal slot, or merely by allowing access to common areas with other prisoners also in special confinement. Such conditions can exacerbate a prisoner's psychosocial or physical disabilities. Where only one detainee was held in an SIU, this effectively left them in solitary confinement, which risks violating the Nelson Mandela rules, whereby such conditions should only be imposed in exceptional cases as a last resort, for as short a time as possible (no longer than 15 days), subject to independent review, and only pursuant to authorization by a competent authority.

The Working Group witnessed the grim conditions of special confinement in prisons, including particularly unhygienic wings in a men's facility with uncleaned faeces-stained walls. Those conditions would be unacceptable for any prisoners, but were particularly concerning given that the detainees held there were vulnerable individuals reportedly in this wing for their own protection. These included individuals with psychosocial disabilities and some trans-gender persons. The Working Group urges the Government of Canada to redress these shortcomings.

2.3 Detention and people at risk

The over-representation of Indigenous Peoples in criminal justice detention, in particular women, was raised by the Working Group in its 2005 Report. Recent data indicates that Indigenous Peoples comprise approximately 5 % of Canada's adult population and represent 32 % of detainees in federal custody and 50 % of all incarcerated women. In certain provincial detention facilities, up to 70 to 80% of inmates are Indigenous. The Working Group received information that the disproportionately high rates of Indigenous Peoples in criminal justice detention were linked to

systemic racism reflected in over-policing, over-prosecution, and over-incarceration. Higher rates of poverty, substance abuse, unemployment, homelessness, family and community breakdown reflect intergenerational trauma and the legacies of racism and colonialism that include Residential Schools, the Child Welfare System and the 60s Scoop. Although the authorities must ensure the protection of the public against violent crimes, it should also take into account these root contributing factors when formulating responses to the over-representation of Indigenous Peoples in the criminal justice system.

In the case of R v. Gladue in 1999, the Supreme Court required judges to consider the background circumstances of Indigenous offenders prior to sentencing, noting that Indigenous over-representation reflected a "crisis" in Canada's criminal justice system. "Social history reports" (Gladue Reports) give judges information on the lives of Indigenous Peoples before sentencing. Although the Gladue Principles are meant to address the over-representation of Indigenous Peoples in detention, the Working Group received information that the criteria were sometimes misused. Concerns were also raised about retraumatization. According to information received, the process of producing such a Gladue Report involves, "telling someone you don't know over the phone about the worst experiences of your life," with no or limited support for such traumatic disclosure.

The Working Group spoke to numerous Indigenous detainees who shared their personal histories of physical and sexual abuse, childhood neglect, substance abuse and psychosocial disabilities, which led to their involvement in the criminal justice system from a young age. They expressed hopes to transition back into their communities and to break the cycle of reoffending. However, a long history of repeated incarceration meant some were ill-equipped to cope with life outside detention. In this regard, the Working Group underscores the importance of increasing chances of a successful release and reducing recidivism.

To this end, Sections 81 and 84 of the Corrections and Conditional Release Act provide for incarceration alternatives, allowing Indigenous Peoples sentenced to federal custody to serve parts of their sentences in their communities or apply for release to an Indigenous community. The Working Group visited two Section 81 facilities - the Buffalo Sage Healing Lodge for women and Stan Daniels Healing Centre for men, where residents developed independent living skills through daily chores, continuing education, culturally appropriate programming, job placements, and established community connections. Positive information was received about the restorative value of the cultural practices and programmes offered. Non-uniformed/plain-clothed staff create a safe and calming environment to mitigate agitation in the presence of uniformed individuals, from encounters with police and correctional officers.

Despite the highly positive feedback, the Working Group was struck by the limited number of beds available, compared to the high number of Indigenous detainees in Alberta, which was above the national average. The Working Group also received information about a serious nation-wide shortage of healing lodge beds and the lack of healing lodges in certain parts of the country. The Working Group recommends much greater use of community-managed Section 81 healing lodges and section 84 releases, and increased funding to maximize these initiatives' impacts.

The Working Group received information that Indigenous Peoples are disproportionately classified as higher security risks. Most maximum security female detainees interviewed by the Working Group were Indigenous. A higher security rating significantly reduces an inmate's area of movement in detention, and their access to education, training and rehabilitative programming. The Working Group received information that Indigenous inmates are also more frequently

subjected to disciplinary sanctions including special confinement regimes, and it learned of a successful class action claim involving segregation of an Indigenous woman.

The Working Group notes the Government's Indigenous Justice Policy with its partners, First Nations, Inuit and Métis which aims to address systemic discrimination and over-representation of Indigenous People in the criminal justice system. It urges the Government to implement the Truth and Reconciliation Commission's call for action and justice and the recommendations made by the Office of the Correctional Investigator on this matter.

The Working Group encourages the Government's emphasis on restorative justice, alternative pathways to reduce recidivism and diversionary programmes. Federal detainees provided positive feedback on culturally sensitive programming which included smudging, sweat lodges, drum circles and the Pathways initiative. Nonetheless, the Working Group also received information that Indigenous detainees sometimes suffered from insufficient access to Elder Reviews, Indigenous programming, and the healing components of correctional plans, which could have cascading negative consequences on security ratings, parole hearings and Section 81 and 84 transfers. It urges the Government to remedy these deficiencies.

While encouraging the further participation and funding for Elders, the Working Group recommends, as it did before, the recruitment of more Indigenous individuals into the police, the judicial system, the corrections administration and the legal professions. It notes the appointment of the first person of colour to the Supreme Court of Canada in 2021 and the first Indigenous justice in 2022. Such structural changes coupled with efforts to reduce the reported discriminatory biases that underlie systemic discrimination are urgently needed alongside initiatives to tackle the root causes that trap Indigenous Peoples in the criminal justice system.

The Working Group was informed of systemic discrimination contributing to disproportionate incarceration of people of African descent. It was updated on recent developments including Canada's Black Justice Strategy, which is the federal Government's response to address racism against people of African descent. It also heard about community partnerships to implement rehabilitation programmes, and the passing of legislation to remove many mandatory minimum penalties that had led to the disproportionate incarceration of Indigenous Peoples, persons of African descent, and other people facing racial discrimination. It was alerted to ongoing concerns about impunity for police violence and racial profiling which, although contrary to the regulatory instruments governing police activities, reportedly continues to occur, thereby contributing to over incarceration of these communities. The Working Group observed disproportionate numbers of detainees of African descent in the highest security settings. It also received information about the differential treatment they face in detention (higher instances of special confinements and use of force) and during the legal process, leading to discriminatory outcomes. The Working Group was informed of the need to utilize class action litigation, due to failure to effect change through engaging with law enforcement. It was told that law enforcement officials have undertaken racial bias training but received insufficient information about other efforts taken by law enforcement authorities. Establishing an effective and independent police oversight mechanism is essential in this respect. The Working Group also received updates about the Anti-Racism Strategy, which concerns combatting racism and discrimination more broadly on all groups.

2.4. Detention in the context of health care

In Canada, the health system is largely under the jurisdiction of provincial authorities. Through the Canada Health Act, the federal Government provides funding to the public health system.

Provinces and Territories have established legislation that allows for the involuntary treatment of individuals with psychosocial disabilities under various conditions. Specialized review boards have the authority to order the full or partial release, or the custody of, an individual deemed unfit to stand trial or found not criminally responsible on account of a "mental disorder". Such individuals may be held in hospitals or other designated mental health facilities. In one such facility, the Working Group observed a continuum of care, the use of independent living units and temporary absences in the community, essential to the successful rehabilitation and reintegration of individuals. It was informed of the shortage of such facilities and the shortage of beds in existing facilities, as well as the low number of referrals of individuals of Indigenous background. In addition, some individuals held in these facilities may never be deemed fit to be released, putting them at risk of *de facto* indefinite detention, which would contravene international standards.

The Working Group observed that detention facilities across the country generally have a health unit with a team of professionals providing physical and mental health services to individuals detained. However, in multiple facilities it visited, the Working Group was informed of difficulties accessing prompt physical health care, with some individuals waiting for several days to be seen by a doctor despite requiring immediate attention.

The Working Group also observed a high prevalence of individuals with psychosocial disabilities detained in penitentiaries. Although individuals with psychosocial disabilities are sometimes housed in separate blocks, this was not uniform and they are otherwise subject to the same or harsher carceral conditions as the general population. In addition, the Working Group was concerned to learn of some cases of remanded individuals detained in designated mental health care units for reasons unrelated to mental health and subject to stricter detention regimes.

The Working Group observed a high prevalence of persons with psychosocial disabilities in SIUs or other forms of special confinement, which often lacked sufficient opportunity for meaningful human interaction. The Working Group underlines the well-documented harm that isolation may cause and the particular needs of individuals with psychosocial disabilities. It encourages the Government to prioritize harm-reduction measures and cease to detain such individuals in conditions that may cause further harm. The Working Group was especially concerned to learn of instances where Indigenous individuals held in these conditions and suffering from past trauma were refused mental health care. In relation to youth referred for involuntary treatment for mental health, the Working Group recalls the need to prioritize personal liberty over institutionalization of individuals with psychosocial disabilities. It encourages the provision of comprehensive health care measures outside of the carceral context and the use of detention as a measure of last resort.

2.4.1. Substance use and treatment

The Working Group was informed of the growing drug crisis affecting the country as a whole and the steps taken by various provinces to address the situation. The creation of specialized courts, such as drug-treatment courts, provides alternatives to incarceration to individuals charged with non-violent offences under the Controlled Drugs and Substances Act or the Criminal Code in cases where drug dependence is a factor. The Working Group welcomes initiatives avoiding detention and instead emphasizing treatment and rehabilitation. Nonetheless, caution must be exercised to ensure that such courts do not cause persons with substance dependencies to falsely confess to crimes. Individuals who wish to seek drug treatment through these courts must plead guilty and are under threat of incarceration in cases of relapses. The Working Group recalls that the threat of imprisonment should not be used as a coercive tool to incentivize people into drug treatment.

The Working Group learned of the availability of various drug rehabilitation programs. However, it also met individuals who were facing substance addiction at the time of their incarceration and were provided no drug-substitute treatment, which in some cases can lead to severe suffering and even death if the detainee relapses into use upon release. Authorities should ensure the availability of harm reduction services and treatment programs that include opioids substitution therapy in places of detention, where medically necessary. The Working Group was also informed of increasing calls and proposed laws to allow the involuntary drug treatment of adults and even youth in different provinces and territories. It recalls that deprivation of liberty in all settings must be an exception and substance abuse treatments must always be based on informed and voluntary consent. As an alternative to compulsory drug treatment, the Working Group urges the authorities to invest in evidence-informed, voluntary, and rights-based health and social services, as well as drug dependence treatment and rehabilitation options in the community.

2.5. Youth Justice

In 2003, Canada introduced the Youth Criminal Justice Act (YCJA) for youths aged 12 to 17, offering various pre and post-charge diversion measures such as warnings, cautions and referrals to community programs. If the young person is found guilty, sentencing options can include various community sentences like probation, or even youth detention. Amendments in 2012 included stricter pre-trial detention and custody criteria. Sentencing youths as adults remains an option in exceptional cases, despite international guidelines advising against this practice for anyone under 18. The Working Group reiterates calls by the Committee on the Rights of the Child that no person under 18 years should be sentenced as an adult, irrespective of the circumstances or the gravity of the offence.

Since its implementation, the YCJA has been linked to a decrease in youth crime rates and custody admissions. For instance, Ontario saw an 87% reduction in youth custody admissions from 2004 to 2022. However, concerns persist about the over-representation of Indigenous and African descent youths in detention, prompting calls for effective strategies to address this issue. The Working Group applauds the prevention, diversion, and community-focused efforts, but also notes recent upticks in youth crime and incarceration in some provinces, stressing the need for more robust community-based programs and non-custodial sentences to prevent recidivism and improve rehabilitation and reintegration of young offenders.

2.6. Migration-related detention

Migrants and asylum seekers can be administratively detained under the Immigration and Refugee Protection Act 2001. This is conducted by CBSA, which operates Immigration Holding Centres. At some centres, the conditions were carceral in nature, with locked doors and limited if any access to open air areas. Detainees complained that the daily half hour opportunity to access the yard was insufficient. Access to gyms and libraries was limited to an hour or two a week. However, detainees were able to remain in common areas throughout most of the day and only consigned to their rooms at night. Private security contractors who guard the detainees are not CBSA officials, making it more difficult for detainees to access information regarding their status and to lodge complaints about their conditions of detention.

The Working Group learned that over 90% of these detainees are not considered to pose public security threats. While migration detention periods vary, some can continue for several years. Canada should specify a maximum period for this form of detention. The longer the duration of

migration detention, the higher the burden should be on CBSA to show meaningful steps to resolve the detained person's situation. The Working Group was alarmed to learn that Canada allows children and youths to be held in holding centres for migrants. Although this may be motivated by family reunification, all efforts must be made to avoid such an outcome. Canada should explicitly prohibit any migration-related detention of persons under 18 years.

Whereas existing policies require that migration detention be a last resort, this does not always occur in practice. Alternatives to detention are often only considered after arrest at the review hearing, when the prejudice of being removed from family, community and employment may have already been done. The authorities should ensure that alternatives to migration detention are considered and that detainees are able to come before an independent judge or justice of the peace within 48 hours of arrest. For those in detention, National Risk Assessments for Detention are not solely focused on migration detainees' potential threat to the public but sometimes instead on disruptive behaviour, which can needlessly lengthen their incarceration. Further, for those with psychosocial disabilities, designated representatives sometimes make decisions on their behalf which can prejudice their legal status and the outcome of their proceedings.

The Working Group was heartened to learn that the 2016 National Immigration Detention Framework has reportedly led to a significant decrease in the number of people held in migration-related detention. However, in addition to Canada's three migration holding centres in Laval, Toronto, and Surrey, migration-related detainees have been held in provincial correctional facilities together with remand and sentenced prisoners. Detaining migrants and asylum seekers, who have not been charged with any crime, in criminal justice facilities has a coercive effect. It can compel detainees to sign away rights such as to pre-removal risk assessments, which can lead to violations of *non-refoulement*. This principle should also be respected when Canada conducts any "danger opinion process", whereby the risk to a potential migration returnee is weighed against the danger to Canada presented by that person. Whilst the Working Group welcomes the news that provinces are ending their memoranda of understanding for migration detention in provincial prisons, it was concerned to hear of indications that the Federal Government is considering placing migration detainees in federal penitentiaries instead.

Regarding migration proceedings, the Working Group learned that detainees are not always represented by counsel and sometimes have trouble accessing legal aid. Decisions are sometimes based on inaccessible classified materials, severely limiting any prospect of challenging them. In some provinces, the threshold for legal aid is below minimum wage level, hampering access to justice. CBSA officials sometimes conduct interviews without due regard for trauma-informed practices, risking re-traumatization of vulnerable interviewees. The Working Group notes with concern the absence of independent controls over the CBSA's detention-related activities, and calls on Canada to establish such an oversight mechanism.

Conclusion

These are the preliminary findings of the Working Group. We look forward to continuing engaging in this constructive dialogue with the Government of Canada while we determine our final conclusions in relation to this country visit. We acknowledge with gratitude the willingness and openness of the Government to invite the Working Group and note that this is an opportunity for introducing reforms to address situations which may amount to arbitrary deprivation of liberty.