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Date of submission:

Title of Resolution: Immigration Detention in Canada

RESOLVED, That the Canadian Federation of University Women (CFUW) urge the Government of Canada, provincial and territorial governments to:

1. Abolish the use of correctional facilities for the purpose of immigration detention and end provincial contracts with the Canadian Border Services Agency (CBSA).
2. Utilize alternate options of immigration monitoring.
3. Support the passage of Bill C-20, The Public Complaints and Review Commission Act

BACKGROUND

Introduction:

Although Canada is deemed to have a progressive refugee policy, global organizations, like Amnesty International and Human Rights Watch, criticize our restrictive border control policy of incarcerating these claimants in detention facilities (Amnesty International and Human Rights Watch, *I Didn't Feel Like a Human in There*, June 2021). Due to concerns over public safety or flight risks, our "Welcome to Canada" infringes upon an individual's human rights. While maintaining security measures, providing alternative placements instead of detention facilities means that claimants are treated with dignity and respect. There is a requirement to ensure that all governmental agencies comply with the recommendations already in place in government documents (Government of Canada, *National Immigration Detention Framework*) so that foreign nationals (meaning a person who is not a Canadian citizen or a permanent resident and includes a stateless person) and permanent residents (all immigrants entering Canada with preapproval from the Canadian government are called permanent residents) arriving at our borders are treated in a respectful, humane manner.

When foreign nationals and permanent residents arrive in Canada, it is currently the responsibility of either CBSA or the RCMP to have them placed in custody until they have completed the immigration process. The presumption is that the immigrant is guilty of being a public safety or flight risk. Immigration Holding Centres (IHC), located in

Toronto, Montreal and Vancouver often impose restrictions that limit the individual's rights and freedoms denying the detainee dignity and respect. In provinces where no immigration holding centre is available, local jails are employed. Those confined in jails are often placed in solitary confinement, so that they are not in contact with the inmates but still must endure the prison system's rules and regulations. Research (Amnesty International and Human Rights Watch, *I Didn't Feel Like a Human in There*, June 2021) suggests that detention in incarcerating facilities has damaging effects, psychologically and physically, even for those who presented no symptoms prior to incarceration.

The intent of this resolution is to advocate for foreign nationals and permanent residents who enter, or are already in Canada and are detained in an incarcerating institution while proceeding through the status determination process.

Immigration and Refugee Applicable Acts:

The Canada Border Services Agency Act (Government of Canada, *Canadian Border Services Agency Act*) makes CBSA responsible for the detention requirements set out in the Immigration and Refugee Protection Act (Government of Canada, *Immigration and Refugee Protection Act*). The Immigration and Refugee Protection Act states that "an officer may issue a warrant for the arrest and detention of a permanent resident or a foreign national who the officer has reasonable grounds to believe is inadmissible and is a danger to the public or is unlikely to appear for examination, an admissibility hearing, removal from Canada, or at a proceeding that could lead to the making of a removal order by the Minister." It further identifies the process of detention review: "If a permanent resident or a foreign national is taken into detention, an officer shall without delay give notice to the Immigration Division. Within 48 hours after a permanent resident or a foreign national is taken into detention, or without delay afterward, the Immigration Division must review the reasons for the continued detention." Detention review then occurs seven days later and monthly for the duration of the detention.

A 2021 report by the Global Detention Project (Global Detention Project, *Immigration Detention in Canada*, April 2021) has identified as a key concern that "Canada does not have an institutionalized framework for independent monitoring of detention conditions, and there is no formal mechanism for immigration detainees to lodge complaints". The introduction of Bill C-20 (Government of Canada, Bill C-20, *An Act establishing the Public Complaints and Review Commission*) in May, 2022 is addressing these issues. The Bill creates the Public Complaints and Review Commission which would be authorized to:

- Carry out reviews of any non-national security activities of the CBSA, either on its own initiative or at the request of the Minister;
- Conduct complaint-related investigations concerning the CBSA, including receiving complaints from the public about conduct and level of service; and
- Launch reviews when complaint-related investigations are not satisfied with CBSA's handling of their concerns.

Since these provisions would assist in providing oversight of the CBSA and its detention practices and offer a method for detainees to be heard, the Bill should receive support.

Abolish Immigration Incarceration:

Canada does not have a legal limit on the length of time that individuals can spend in immigration detention, but the Federal Court of Appeal has said that the statutory detention review process legally fills this gap (Federal Court of Appeal 130, *Brown v. Canada*) and therefore the current system is considered to be constitutional. However, this does not mean that the current system is either humane, in line with current international standards, or is meeting the needs of those who are refugees or seeking asylum in Canada.

The International Organization for Migration (IOM), part of UN Migration, makes the distinction between “a deprivation of liberty, which is relevant to detention, and a simple restriction of movement, characterizing non-custodial measures.” The European Court of Human Rights has affirmed that the difference between deprivation or restriction upon liberty is one of degree or intensity and not one of nature or substance. (International Organization for Migration, *IMO Submission to the Working Group of Arbitrary Detention*)

Policies which detain or incarcerate foreign nationals create serious consequences to their mental health. Foreign nationals fleeing from their home country often experience physical and mental trauma like war, racial/religious/sexual persecution, or torture. They arrive in Canada seeking a safe haven only to discover that they are incarcerated in either a prison or a detention facility. Although they are not held on criminal charges, they experience very restrictive confinement conditions like being handcuffed or shackled and having no outside contact. Research (Amnesty International and Human Rights Watch, *I Didn't Feel Like a Human in There*, June 2021) demonstrates that these stressors become exacerbated by the incarcerating conditions. For months or years later, claimants may deal with depression, suicidal tendencies, PTSD, psychosis, panic attacks and adjustment difficulties (Mental Health Commission of Canada, *The Mental Health Commission of Canada hosts government sector round table on refugee mental health*, May 25, 2016). Detainees with pre-existing mental health tendencies are often placed in jails rather than detention centres as they are viewed as a risk to public safety and disproportionately receive intimidating treatment (Amnesty International and Human Rights Watch, *I Didn't Feel Like a Human in There*, June 2021). Detainees of colour may not only be detained for a longer periods of time but are also more often placed in jails. Foreign nationals who enter countries with supportive alternative policies (such as community support) are better able to integrate into the community and suffer less from future mental health difficulties (UNHCR The UN Refugee Agency, *Mental Health and Psychosocial Support*).

During the pandemic, fewer people were detained, and alternatives were used. Statistics have shown that this did not result in a significant rise in the number of no-shows at immigration hearings, the most common reason for detention (about 5.5% in

2021, compared to 5.9% in 2019). This shows that the system can operate without incarceration (Halifax Chronicle-Herald, *“After Pandemic Drop, Canada’s Detention of Immigrants Rises Again”*, April 12, 2022).

Human Rights Watch and Amnesty International have launched a Canadian campaign called #Welcome to Canada to seek support to end these human rights violations. “We believe Canada should uphold its welcoming reputation by treating all people with the dignity and respect they deserve. We are asking all Canadians to call on their leaders in government to cancel the provincial immigration contracts between provincial and federal governments and to stop using provincial jails to lock up people seeking safety or a better life in Canada” (Human Rights Watch and Amnesty International, *Welcome to Canada*). To date Nova Scotia and British Columbia have formally agreed to stop incarcerating immigrants identified by CBSA as a flight risk. Both Alberta (CBC News, *Alberta ending immigration detention arrangement with CBSA*, October 22, 2022) and Manitoba (CBC News, *Manitoba becomes Fourth Province to say it will stop imprisoning immigrants*, October 24, 2022) have also committed to stop incarcerating immigrants who have committed no crime.

Detention Alternatives:

The funding from the federal government which CBSA receives to support refugee detention in jails and immigration centres, in alignment with the criminal justice system, could, in partnership with CBSA, be transferred to agencies who support a non-penalized system. The present IHCs, which are very restrictive, could be made into welcoming centres providing support services, freedom of movement and ability to contact relatives while waiting for their applications to be processed. Other alternatives include:

- Tagging or tracking: Accomplished by the use of GPS. Home curfews, telephone calls or reporting to police stations at regular intervals may also be used.
- Supervised Case Management: In some jurisdictions CBSA has partnered with approved agencies like the John Howard Society, Red Cross and Salvation Army (Canadian Red Cross, *Promoting the rights of immigration detainees*) who offer intensive supervision in a case management system. This is a hybrid system of shared responsibility between government and non-government organizations. They offer support for legal and translation services until the resolution of their immigration status determination is complete.
- Bail Deposit: Another alternative is to have a deposit of money or bail to secure compliance. The Toronto Bail Program (Canadian Council for Refugees, *Alternatives to Detention: CCR comments regarding the Toronto Bail Program*) acts as the claimants’ guarantor, so supervision is less restrictive.
- Rights-affirming supportive community-based case management program: Through independent agencies, foreign nationals are given help in accessing housing, language instruction/translation, legal supports to help the foreign national understand the immigration status process and provide health services.

Organizations like Matthew House (The Matthew House Refugee Hearing Program) or Sojourn House (Sojourn House For Refugees) allow for freedom of movement and treat foreign nationals with dignity and respect.

Conclusion:

Seeking asylum is not an unlawful act, so Canada should not be incarcerating foreign nationals and permanent residents while they proceed through the status determination process. There are alternatives to incarceration. A national CFUW policy on this topic would allow Clubs across the country to advocate for change.

Implementation:

1. Learn more about the Immigration Detention Process – your Club or Advocacy Group.
2. Engage with local NGOs in supporting immigrants.
3. Write to your local MP requesting their support in passing Bill C-20 and in ending Immigration Detention.
4. Write to your local MPP/MLA requesting their support in ending immigration detention.
5. Support the #Welcome to Canada campaign.

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