CANADIAN RED CROSS
Immigration Detention Monitoring Program (IDMP)
Annual Report
Monitoring Period – April 2020 to March 2021

CONFIDENTIAL

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Contents

List of Abbreviations

AB	Alberta
ATD	Alternatives to Detention
BC	British Columbia
CBSA	Canada Border Services Agency
CRCS	Canadian Red Cross Society
DLO	Detention Liaison Officer
GTA	Greater Toronto Area
IDMP	Immigration Detention Monitoring Program
IFHP	Interim Federal Health Program
IHC	Immigration Holding Centre
IRPA	Immigration and Refugee Protection Act
MB	Manitoba
MRAP	Management Response and Action Plan
NS	Nova Scotia
NGO	Non-Governmental Organization
ON	Ontario
PCF	Provincial Correctional Facility
PPE	Personal Protective Equipment
QC	Quebec
UNHCR	United Nations High Commissioner for Refugees

Executive Summary

Within the Canadian Red Cross Society (CRCS), detention monitoring is administered by the Immigration Detention Monitoring Program (IDMP) in accordance with the Contract between the CRCS and the Canada Border Services Agency (CBSA)[1]. Pursuant to this Contract, this report reflects CRCS Immigration Detention Monitoring Program activities carried out between April 2020 and March 2021.

According to this agreement, CRCS monitoring activities focus on the following four key areas in the detention of people under the Immigration and Refugee Protection Act (IRPA):

- The conditions of detention - the state of the detention environment and services offered (e.g., facility, lighting, food, recreation, healthcare, and well-being of detained individuals in that environment);
- Treatment of detained individuals by facility staff, contractors and other detained people;
- The legal guarantees and procedural safeguards – the ability of detained people to exercise their human rights, access to procedural safeguards (under e.g., Canadian Charter of Rights and Freedoms, Article 36 of the Vienna Convention on Consular Relations, and effective legal remedies and protection from arbitrary detention); and
- The detained person's ability to contact and maintain contact with family.

This report highlights the observations and recommendations of the CRCS following a total of fifty five (55) monitoring activities, including thirty three (33) regular monitoring activities and twenty two (22) activities in response to a notification of an event involving a person detained under the IRPA, at fourteen (14) detention facilities holding persons detained under the IRPA between April 2020 and March 2021. Observations and recommendations are grouped into the following main themes:

- COVID-19, numbers and the four key areas of detention monitoring;
- Detention in the IHCs vs detention in the PCFs; and
- Vulnerable people and people detained for longer periods.

Based on observations, the CRCS makes the following main recommendations to the CBSA within this report:

- Continue implementing measures that have reduced the number of people detained under IRPA;
- Ensure that measures are in place to maintain acceptable detention conditions during preventative isolation, medical isolation in response to COVID-19 outbreaks, and other types of lockdowns;
- Continue to reduce reliance on PCFs through ATDs and placement in IHCs, especially for vulnerable individuals, and adopt measures to eliminate co-mingling in the near future;
- Ensure that persons detained under the IRPA have full and timely access to health services covered by the Interim Federal Health Program (IFHP) or equivalent coverage;
- Ensure that people detained for immigration reasons have access to leisure, cultural and educational activities regardless of their place of detention;
- Prioritize DLO contact with all people held in PCFs and ensure the use of professional interpretation services during key moments of detention;
- Offer video conference services to all people held for immigration reasons, regardless of their place of detention, and ensure people detained have access to in-person contact visits, once the public health situation permits; and
- Finally, end the practice of placing children in detention facilities and further develop ATDs allowing for family unity outside detention.

[1] The period of the Contract from June 28, 2017 to July 15, 2020, inclusive; and the period of the Contract from February 23, 2021 to February 22, 2024, inclusive.

1. Introduction: Interim Monitoring Mechanism and Activity Statistics

The CRCS provides independent monitoring of detention under the IRPA to promote a protective environment in which people detained for immigration reasons are treated humanely and where their human rights and inherent dignity are respected, in accordance with international and domestic standards. During visits to places of detention, the CRCS monitors and assesses the conditions of detention and treatment of people held administratively under the IRPA in federal government-run IHCs, detention facilities under the management of provincial authorities, or other municipal correctional facilities[1]. In accordance with an agreement between the CRCS and the CBSA, this report reflects CRCS IDMP activities carried out between April 2020 and March 2021.

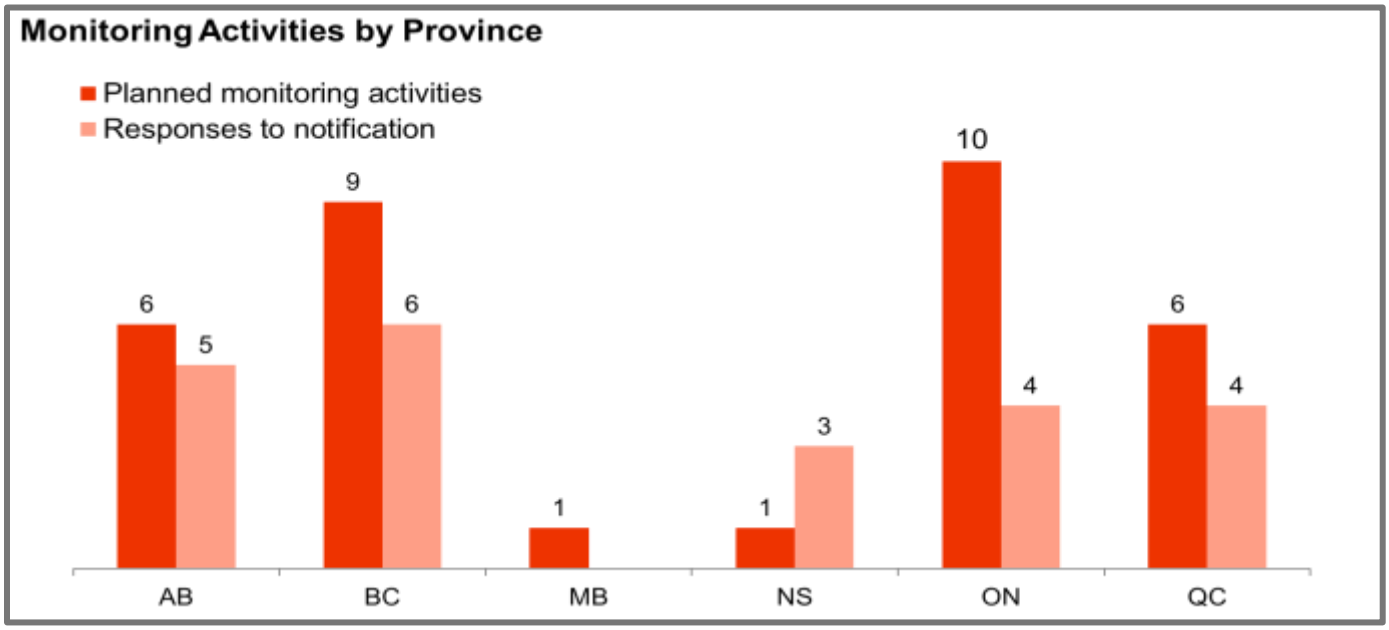
On March 11, 2020, the World Health Organization declared the COVID-19 outbreak a pandemic and it remains an emergency of international concern. The outbreak has significantly impacted Canada, and considering the high risk to Canadians, efforts across the country to reduce the spread of COVID-19 have been taken by federal, provincial, and municipal authorities. As a precautionary measure related to COVID-19, following guidelines from public health authorities and in consultation with the CBSA, the CRCS suspended all in-person visits effective March 16, 2020. In order to resume operations during the pandemic, the CRCS reached out to stakeholders at various levels and considered different scenarios. As a result, an interim mechanism was developed which allows for privacy of conversations between CRCS and detained people and upholds both the "do no harm" principle when interacting with detained people and facility staff as well as the duty of care for CRCS personnel and volunteers. CRCS detention monitoring activities resumed in the second half of June 2020 under this interim mechanism where confidential interactions with individuals in detention are conducted remotely via teleconference. Therefore, since monitoring was carried out remotely, the use of the term "monitoring activity" was adopted and will be used in this report, along with the term "remote visit" to better indicate the scope of monitoring processes in a remote model.

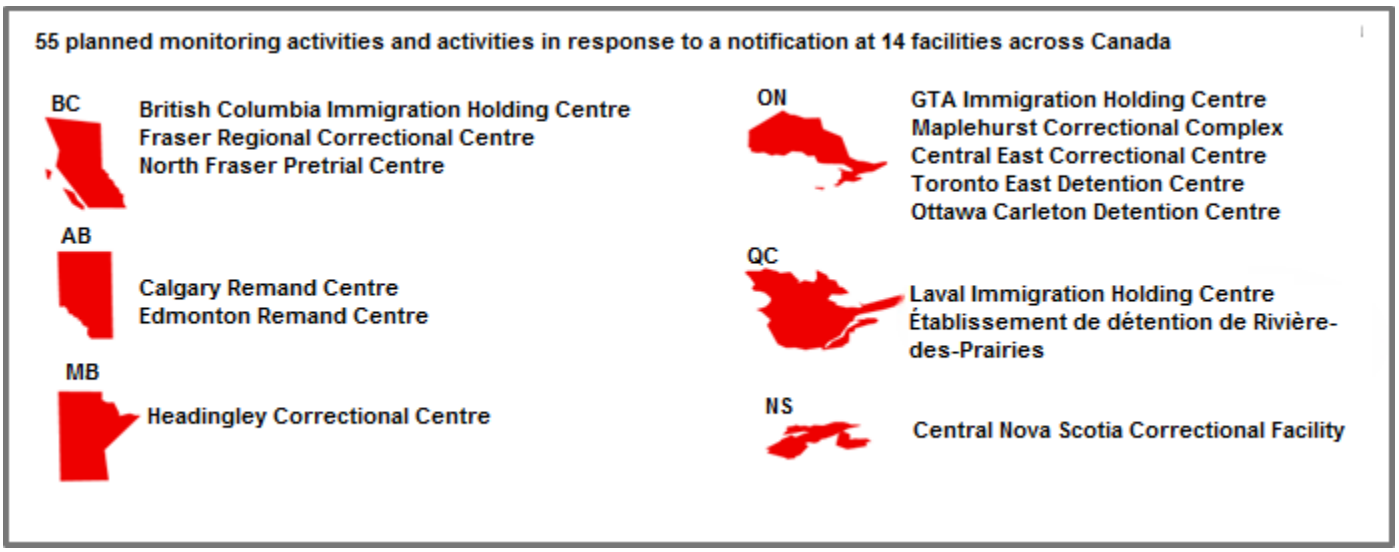
The CRCS emphasizes that its IDMP does not provide assessment of COVID-19 response measures or public health guidance. Regarding public health measures, IDMP defers to public health authorities, however this report may highlight certain good practices and how the four key areas of focus for IDMP were affected by the COVID-19 response measures in detention facilities.

The capacity of the CRCS to carry out planned monitoring activities was affected by constraints beyond its control, such as no people under IRPA being detained at the time of a proposed monitoring activity; the facility being unable to accommodate a monitoring activity or unable to provide private and confidential conversations, in some cases due to COVID-19 outbreaks in the facilities; low numbers of detained individuals willing to have an open conversation about their detention over the phone; and obstacles to the triangulation process. In some cases, lower numbers of detention under IRPA paired with other challenges related to the COVID-19 pandemic resulted in more than one remote visit being necessary to complete the IDMP's observations in certain locations.

Despite the challenges, a total of fifty five (55) monitoring activities[2] were conducted during the monitoring period, including 33 regular monitoring activities and 22 activities in response to a notification of an event involving a person detained under the IRPA. The CRCS acknowledges the support of CBSA and PCF representatives and staff to facilitate access to individuals detained in the monitored facilities.

[1] During the reporting period the CRCS did not conduct visits to municipal correctional facilities.
[2] The number of monitoring activities completed is based on three quarters – Q1 visits were suspended due to the COVID-19 outbreak.



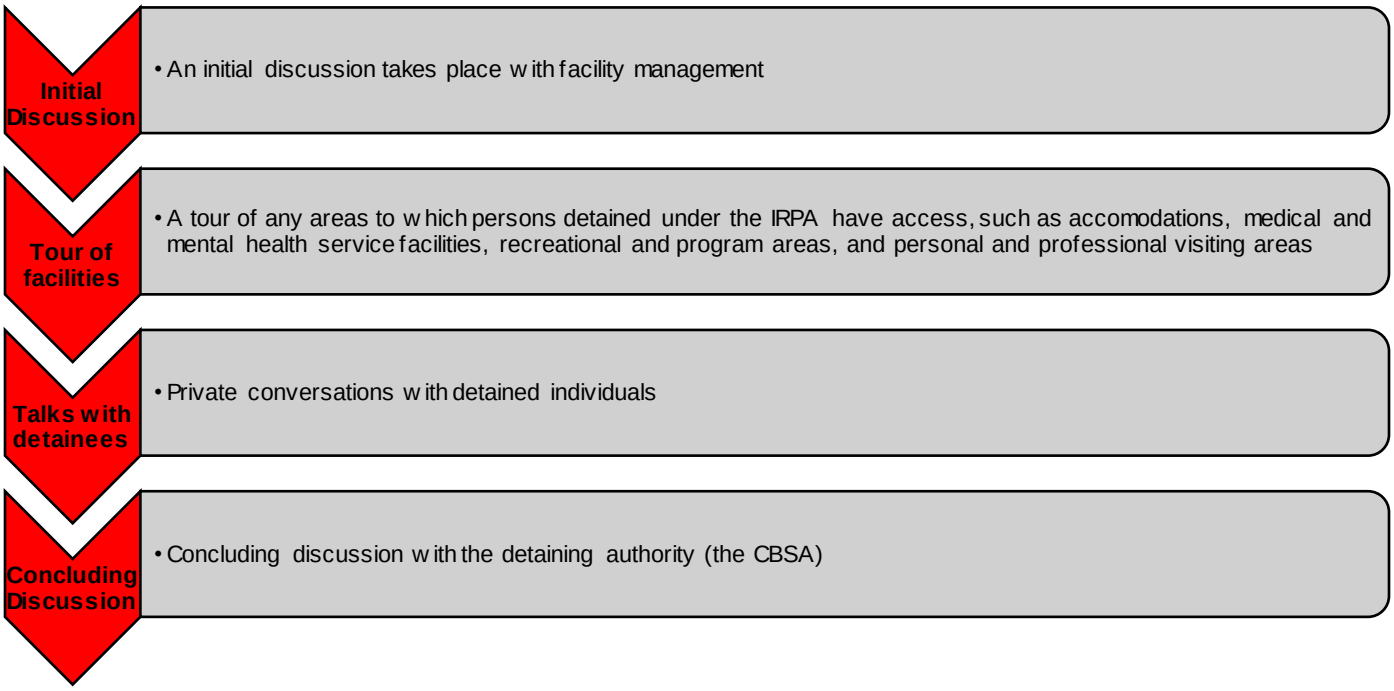


During visits to places of detention, the CRCS took a system-wide approach focussing on the above mentioned themes[1] assessed against the following four categories:

1. Conditions of detention;
2. Treatment;
3. Access to legal guarantees and procedural safeguards; and
4. Ability to contact and maintain contact with family.

[1] See Page 4.

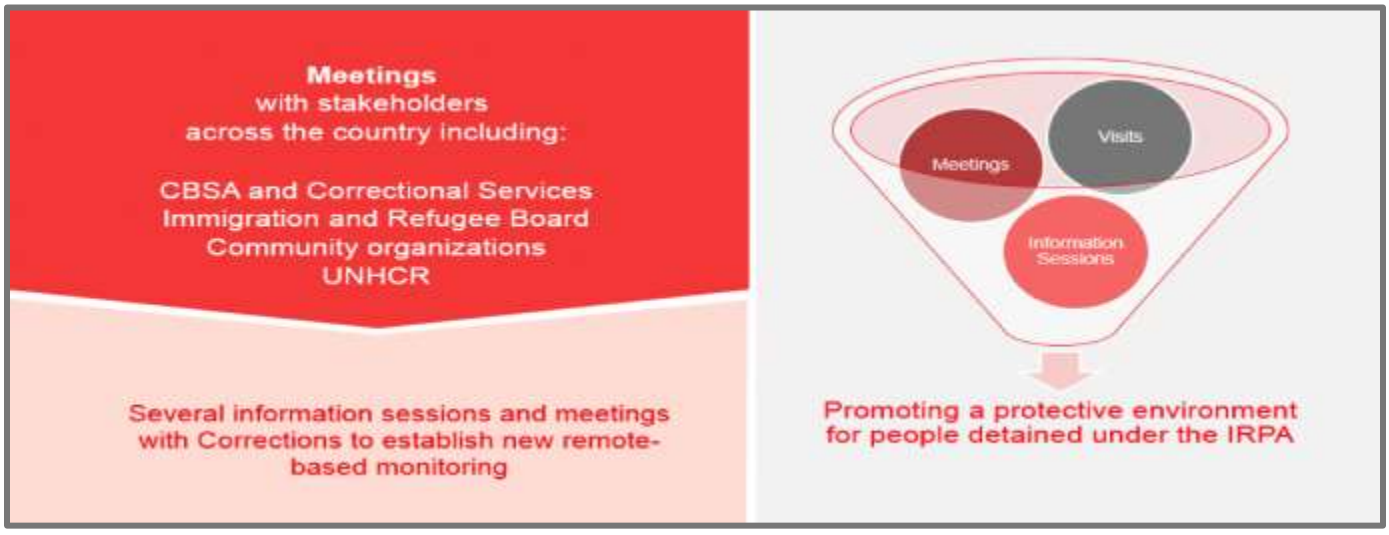
Visits follow a standard procedure that includes the following steps[1]:



Over the course of the reporting period, the CRCS team conducted over 120 interviews with individuals detained under the IRPA in IHCs and PCFs, with the highest number of interviews taking place in British Columbia and Ontario, followed by Alberta, Quebec, Nova Scotia, and Manitoba.

During the reporting period and in order to promote a protective environment for people detained under the IRPA, the CRCS carried out information sessions on its mandate for the detaining authority staff and personnel in direct contact with persons detained under the IRPA. Moreover, the CRCS held meetings with stakeholders, including CBSA representatives at HQ and regional levels, personnel of provincial correctional services, United Nations High Commission for Refugees (UNHCR), Immigration and Refugee Board of Canada, and local NGOs supporting persons detained under the IRPA.

[1] Some stages were not possible during remote monitoring.



2. COVID-19, numbers, and the four key areas of monitoring

The COVID-19 outbreak continues to affect people all over the world. Given that detention facilities are congregate living settings, the COVID-19 pandemic poses a serious health risk to detained people and staff working there. Although IDMP does not have systematic information on COVID-19 outbreaks in the facilities it monitors, information was collected on 11 occurrences of one or several related cases of detained people and/or staff members contracting COVID-19 within these facilities.

All the monitored facilities liaised with public health authorities and put in place public health measures with the aim of reducing the risk of COVID-19 transmission within the centers. The CRCS emphasizes that its IDMP does not provide assessment of these measures or public health guidance and defers to public health authorities regarding these matters. However, IDMP did evaluate how they affected the basic rights of people detained, taking into consideration the public health emergency and the way response measures affected the four key areas of monitoring defined in the Contract.

2.1 Numbers

Several organizations with expertise in health and rights in detention have highlighted that reducing the number of people detained was one of the most important steps that could be taken to limit the spread of COVID-19 in detention[1]. This would generate benefits in public health as well as facilitate the respect of basic rights by limiting the number of people who can be potentially infected; facilitating physical distancing and general hygiene measures, such as cleaning; as well as facilitating the implementation of mitigation efforts for those who remain in detention.

The IDMP observed lower numbers of people detained for immigration reasons this reporting period compared to the previous one. At the Laval and Toronto IHCs, numbers of people observed during monitoring activities and statistics on days of detention – determined by numbers of people and length of detention – both indicated sharp decreases. The IDMP notes that lower numbers of newly arrived migrants, particularly at the Laval IHC, may be due to policies put in place outside of detention, and it does not comment on the legality and humanitarian impact of these policies since it is outside the IDMP's mandate. The Surrey IHC, which became operational shortly before the pandemic, does not have a pre-pandemic baseline to permit the same comparison. However, it is operating well below capacity

[1] See "Note on the Protection of Migrants in Light of the COVID-19 Pandemic", International Committee of the Red Cross, 5 October 2020, p. 2-3, https://shop.icrc.org/note-on-protection-of-migrants-in-light-of-the-covid-19-pandemic-pdf-en: The Inter-agency Standing Committee, March 2020, Interim Guidance, COVID-19: Focus on People Deprived of their Liberty, p. 3, IASC Interim Guidance on COVID-19: Focus on Persons Deprived of Their Liberty (developed by OHCHR and WHO) | IASC (interagencystandingcommittee.org); COVID-19 and Immigration Detention: What Can Governments and Other Stakeholders Do? UN Working Group on Alternatives to Detention COVID-19, April 2020, p. 3-5, UN_network_on_migration_wg_atd_policy_brief_covid-19_and_immigration_detention_0.pdf and "Statement of Principles Relating to the Treatment of Persons Deprived of their Liberty in the Context of the Coronavirus Disease (COVID-19) Pandemic" 20 March 2020, European Committee on the Prevention of Torture and Inhumane or Degrading Treatment or Punishment, Council of Europe, CPT/Inf(2020)13, Principle no 5, 16809cfa4b (coe.int).

(at less than 25% of its capacity). Moreover, overall days of detention in the province have decreased compared to the previous monitoring period.

The days of detention of people held under IRPA at all the PCFs where monitoring activities took place this reporting period have been reduced – sometimes greatly reduced – when compared to the previous reporting period. However, IDMP calls attention to the fact that overall numbers in these facilities did not necessarily follow this trend. IDMP observed that decreases in occupancy early in the pandemic were generally more modest in PCFs than in IHCs. Moreover, at times during the period under review, the numbers of people detained at six (6) of the monitored PCFs had returned to near pre-pandemic levels[1]. Accordingly, most people detained under IRPA placed in detention facilities under the management of provincial authorities did not benefit from the advantages of major reductions in population. It can be noted that occupancy rates at the unit level are key and may differ from the general population rate. In some PCFs, unoccupied units were reopened to spread people out; however, the creation of medical isolation units (droplet precaution) and preventative isolation units in other facilities had a contrary effect, reducing the number of sectors in which an individual could be placed and raising occupancy rates in some units.

Recommendations

The CRCS highlights that detention centers are congregate living settings and that detained people and staff are at greater risk of infection due to challenges in maintaining physical distancing, the number of high-touch surfaces, and the use of common areas. The CRCS recommends continuing implementing measures that have reduced the number of people detained under IRPA as long as they are consistent with Canada's national and international obligations – both in and outside detention. Furthermore, CRCS recommends doing so even after the public health emergency ends.

Acknowledging CBSA efforts to reduce numbers of persons detained under IRPA, the CRCS recommends that CBSA avoid placement of persons detained under IRPA in detention facilities under the management of other authorities[2] in order that all people detained under IRPA benefit from the advantages of lower rates of occupancy.

2.2 COVID-19 and Conditions of Detention

All the monitored facilities put in place an initial isolation period with the guidance of public health authorities, in response to the possibility of pre-symptomatic and asymptomatic transmission. Also, during COVID-19 outbreaks, facilities placed all the individuals on certain units on medical isolation status (droplet precaution). The impact these COVID-related isolation regimes had on conditions of detention, and the measures to mitigate them, varied over time as well as from one facility to another. At the Toronto IHC and the Surrey IHC, restrictions were minimal and basic conditions in preventative isolation were close to those in non-isolation units. At the Laval IHC, the conditions of isolation imposed some level of restriction on movement; however adequate measures were put in place to mitigate the negative impacts (facilitated by lower numbers at the centre), such as the possibility to leave the room several times per day, easy access to the telephone and to open air, and the possibility to talk to a mental health care service provider over the phone.

The situation in PCFs varied greatly from one institution to the next. While some were more successful in finding an adequate balance between public health and adequate conditions of detention, others had difficulty in consistently applying public health measures in a way that protected detained individuals' basic rights and responded to their fundamental needs. It must be noted that facilities faced challenges such as fixed infrastructures[3], facility staffing pressures due to COVID-19 and the obligation to comply with a series of new rules.

The circumstances explaining the difficulties detained people encountered in the monitored PCFs while under COVID-related isolation differed: in some cases, isolation regime mitigation measures were deficient at their inception and were eventually improved; in others, basic conditions deteriorated during COVID-19 outbreaks. The major problems observed were as follows:

- In five (5) monitored PCFs, during part or all of the reporting period, detained people in COVID-related isolation were not allowed out of their cells every day. Depending on the facility, detained people were allowed out between once every two days and once every two weeks to access common areas where basic services are offered, such as showers and telephones. When allowed out of cell, the time allotted tended to be very short, in some cases 20 minutes;

[1] Over an established pre-pandemic baseline or less than 5% below it.
[2] Provincial, municipal and other authorities.
[3] For example, PCFs are not designed to medically isolate everyone who enters the facility for 14 days and management had to improvise intake isolation units.

- Five (5) PCFs did not offer daily access to open air for people under isolation; the possibility to access open air was either reduced or impossible, depending on staffing, the rules of the facilities, and their infrastructure;
- In four (4) facilities, very few recreational activities were available to people in COVID-related isolation. Televisions, if present in units, were not always visible or audible depending on the location of the cell, and books were not always in a language read by the detained person; and
- Triple bunking of people on COVID-related isolation was reported in three (3) monitored PCFs, for example during outbreaks in facilities with limited infrastructure, as facility staff were required to separate detained people according to COVID-19 status.

Management at these facilities was sensitive to the difficulties caused by time spent in COVID-related isolation and they developed different strategies to mitigate these problems, which had varying levels of success. For example, in one facility, chaplains and specialized staff would reach out to detained people in preventative isolation to check on their wellbeing. In some instances, items such as books, radios, or fans in the summer, were handed out to isolated people.

2.3 COVID-19 and Treatment

At eight (8) PCFs and two (2) IHCs, there was individual placement of detained people in a cell or room during the 14-day intake isolation. Although individual placement is advantageous in terms of public health, it can contribute to the creation of conditions of solitary confinement if proper mitigation is not in place. At the IHCs, the isolation regimes permitted detained people to leave their rooms several times per day and they could engage in regular meaningful contact with relatives through the telephones as well as with other detained people or facility staff such as mental health service providers, which helped mitigate the hardships of isolation. At five (5) of the monitored PCFs, detained people reported being allowed out of their cell less than two hours per day and meaningful contact not being regularly possible during COVID-related isolation, which risks creating conditions of solitary confinement. Of note, people with mental health conditions are particularly vulnerable to these types of conditions.

2.4 COVID-19 and Access to Legal and Procedural Safeguards

At the monitored IHCs and PCFs, contact with lawyers and participation in detention hearings remained possible during the 14-day intake isolation and medical isolation (droplet precaution) in response to COVID-19, mostly through telephone or video calls. However, lack of time out of cell at many PCFs during COVID-19 isolation greatly reduced access to telephones to call one's lawyer. Also, while all facilities were able to facilitate detention hearings, delays due to pandemic-related issues were reported at two (2) of the monitored PCFs.

Detained individuals at four (4) PCFs reported a lack of confidentiality of information during contact with lawyers and detention hearings throughout the monitoring period – either in times of an outbreak or while finetuning the new intake isolation procedures. In these cases, the way the telephone hearings and the calls to lawyers were set up permitted correctional staff and/or other detained people to overhear the conversation or part of it. Also, at one (1) PCF, there were cases where detained people did not enjoy basic comfort to fully participate in detention hearings – having to listen and speak on a telephone through the door hatch – although the facility quickly remedied this after being made aware of the issue.

CBSA Detention Liaison Officer's (DLO's) access to detained people in preventative isolation or COVID-19 isolation was not always possible. It must be noted that COVID-related isolation was the period where detained people were often most in need of assistance given the reduced time out of cell to access basic services.

2.5 COVID-19 and Family Contacts

During intake isolation and medical isolation in response to COVID-19, the possibility of contacting family varied from one facility to another and over time within facilities during the monitoring period. While daily calls during isolation were possible at eight (8) facilities – including the three (3) IHCs – at another five (5) facilities they were limited to the times where people were allowed out of cell, or when special calls were arranged[1], usually ranging between once every two days and once every two weeks. At these facilities, given the time out of cell allotment was minimal, detained people sometimes had to choose between showering and calling a loved one. As mentioned above, limited possibility of meaningful contact was particularly detrimental in cases of individual cell placement in isolation.

[1] It was not possible to obtain systemic findings in another two (2) facilities on the issue.

Personal visits were suspended at most facilities at the beginning of the pandemic. IDMP understands the measure as a temporary restriction in response to a public health emergency. Depending on the circumstances in the surrounding community, in-person visits with precautions, such as the use of PPE, became possible at seven (7) facilities on exceptional basis or with an appointment and only for detained people not in isolation. When possible, in-person family visits were particularly important in cases of removal, where a parent was to be separated from a child who would stay in Canada.

The impact of the suspension or restriction of in-person visits must be weighed in light of efforts to mitigate its negative effects. Of note, all the monitored facilities put in place special measures to facilitate family contact, such as free calling cards provided regularly, waving fees on national calls, permitting free exceptional international calls, and putting in place a video calling system. Also, despite the suspension of personal visits, in at least five (5) facilities, it remained possible to leave items for a detained person who would receive them after a quarantine period.

Recommendations

The CRCS recommends ensuring that measures are in place to maintain acceptable detention conditions during preventative isolation, medical isolation in response to COVID-19 outbreaks, and other types of lockdowns.

The CRCS recommends regular access to the following should be maintained, even if they must be adjusted for public health reasons:

- *common areas outside the cell, including showers;*
- *open air;*
- *telephones or other means of communication to ensure continuing interaction with family, friends, legal counsel, and consular authorities; and*
- *space allowing for confidentiality of information shared with lawyers and during detention reviews.*

The CRCS recognises that placement of an individual separate from others reduces the risk of COVID-19 transmission in intake isolation. Specific considerations for such placement should include, among others, vulnerability to COVID-19 and other vulnerabilities, situation preceding placement in detention, and the preference of the person being detained. Moreover, under no circumstances should people detained under IRPA be placed in conditions that could amount to solitary confinement. Sufficient daily time out of cell or room and the possibility for regular meaningful contact with others must be maintained.

Given the challenges that some PCFs faced responding to COVID-19, the CRCS recommends, when placement in these facilities cannot be avoided, to prioritize DLO contact with detained people in intake isolation and in units under medical isolation due to COVID-19 or under other types of long-term lockdown.

3. Detention in the IHCs vs detention in the PCFs

The use of correctional facilities to hold people detained under IRPA remains a major source of concern. In quarters one and two of 2020-21, 587 out of 799 people detained under IRPA were held in facilities other than IHCs, of which 470 were held in PCFs[1].

While co-mingling between people detained under the IRPA and those detained under the Criminal Code – whether at the cell-level or the unit-level – continued to be practiced in monitored provincial correctional facilities, the CRCS recognizes further efforts by CBSA to reduce reliance on PCFs. For example:

- With lower numbers of people detained, the Toronto IHC used available capacity to admit more individuals with complicated profiles who would otherwise be detained in PCFs, a measure that it has been developing since the opening of its heightened security units. Currently, every unit can serve as a heightened security unit further expanding the capacity to hold individuals with complicated profiles;

- The Laval IHC continues to receive people with a criminal past, limiting numbers in PCFs. Moreover, lower numbers (see above) meant the center could play a greater regional role, receiving voluntary transfers from the Northern Ontario Region and the

[1] Arrests, detentions and removals. Quarterly detention statistics: First and second quarter (Q1-Q2), fiscal year 2020 to 2021 https://www.cbsa-asfc.gc.ca/security-securite/detent/qstat-2020-2021-eng.html

Maritimes when public health measures permitted it, which is not possible when the center is close to its maximum capacity; and

- The Surrey IHC, which opened in early 2020, offers the possibility of greatly reducing co-mingling in the Pacific and the Prairies Regions. Also, the continued efforts of Fraser Regional Correctional Centre to maintain a dedicated immigration unit are recognized as this allows to separate people held under IRPA from people held under the Criminal Code. However, people detained under the IRPA in that facility remain in high security restrictive settings, as are most people held under IRPA and placed in PCFs.

3.1 Conditions of Detention

The IHCs and the PCFs monitored offered very different conditions of detention. In IHCs, individuals are held in rooms, and can move freely to other parts of a secured section. Toilets are closed spaces outside the room. Most people detained in PCFs are housed in cells in general population units. In all but one of the monitored PCFs, detained people share their cells with people held under the Criminal Code. Toilets are located in the cells leaving very little privacy. While not under medical isolation or lockdown, time out of cell in general population units varies from one facility to the next and from one unit to the next, from as much as 11 hours to as little as one hour. In some of the monitored PCFs, people detained under IRPA can be placed in medium-security dorms, affording them greater freedom of movement. Lockdowns were reported in five (5) PCFs for reasons other than COVID-19, in these situations detained people cannot leave their cells for periods varying from a few hours to a few days. The reasons were most often linked to security or staffing issues. It is important to note that lockdowns have a much stronger impact on people held in higher security general population units than on those held in medium security dorms.

No systemic obstacles were reported in accessing healthcare in the IHCs. In PCFs, the situation varied. Although health care services were easily accessed in some facilities, detained people at three (3) PCFs mentioned long delays to see a doctor after having requested a consultation. These delays, which can be up to eight (8) weeks, discouraged some from requesting appointments. The CRCS notes that other people at two (2) of these three (3) facilities faced much shorter delays, and waiting time depended, in part, on diagnosed conditions. Also, as previously reported, the initial health screening at one (1) PCF is still carried out by a correctional officer which can create problems in terms of public health for the general population and of continuity of care for that individual.

People in IHCs reported having access to books, board games, and televisions where they could change channels. In PCFs, the situation varied. Books were available and certain units had televisions which only some could see and hear depending on the location of their cell. Many activities were suspended because of the pandemic, for example, educational programming and access to gyms located outside the units were suspended. Some facilities put in place innovative solutions, such as virtual education. In some PCFs, people detained under IRPA can voluntarily work as cleaners, which was appreciated by those participating in the activity.

Yards in IHCs were accessible daily. In PCFs, the situation varied, if it was possible to have regular yard time in some facilities; people held in five (5) PCFs not under isolation reported not having daily access to the yards, among other things, due to frequent lockdowns and infrastructural limits. Moreover, if not the case for all the monitored PCFs, it is questionable whether yards in certain correctional facilities actually constitute “open air.” While understanding that this type of infrastructure responds to security concerns related to criminal detention, the CRCS notes these spaces are inside the units and are surrounded by concrete floors and walls with part of the ceiling closed and the other part being mesh through which the sky is visible.

3.2 Treatment

CBSA personnel constant presence at the IHCs permits them to have closer contact with detained people held under IRPA. Also, all three facilities have a direct supervision model where guards are constantly present in the units. Beyond helping identify the needs of detained individuals, this also permits the detaining authority to proactively identify potential conflicts between detained people and take corrective actions, such as mediation or changes of units. The vast majority of people interviewed in the monitored IHCs reported feeling safe and physical altercations between detained people were not reported. Problems between detained people and guards were brought to the IDMP’s attention; however, facility management took appropriate measures to respond.

Given the number of detained people and dynamics linked to criminal detention, the situation was different at the monitored PCFs. Most units in the monitored PCFs are under indirect supervision, meaning the correctional officers are posted outside the units, which limits their interaction with detained people. As mentioned, in all but one PCF, people detained under IRPA are co-mingled at unit and even cell level with people held under the Criminal Code. Use of force by staff is more frequent in PCFs than in IHCs. Moreover, detained

individuals interviewed in at least four (4) PCFs described seeing or being victims of violence at the hands of other detained people – in some of these facilities up to half of those interviewed. Some reported being victims of serious assaults, such as stabbings or beatings, and said they did not request medical care out of fear of reprisals. Of note, there were public reports of people held under the Criminal Code in two (2) of the monitored PCFs becoming victims of homicide during the period covered by the report and allegations of sexual assault by a correctional officer against women held under the Criminal Code at another facility, highlighting serious security issues faced in some of these facilities.

Finally, people detained under IRPA and placed in PCFs are subject to the same disciplinary regime and to the same security measures as those detained under the Criminal Code, including strip searches.

Recommendations Regarding Conditions of Detention and Treatment

The CRCS recognizes concrete measures by CBSA to reduce reliance on PCFs, through broader use of ATDs and greater reliance on IHCs. However, it reiterates that co-mingling people detained under IRPA with people incarcerated under the Criminal Code in PCFs has important negative consequences. In response to CBSA's Management Response and Action Plans (MRAP) from 2018-2019 and 2019-2020, the CRCS recommends CBSA goes beyond reducing reliance on PCFs and develops a plan to eliminate co-mingling in the near future, as the practice places people detained for administrative reasons in conditions that are more restrictive than what is minimally necessary, over which CBSA has little to no control, and which subjects them to a greater risk of inappropriate treatment.

Until measures are in place to eliminate co-mingling, the CRCS recommends CBSA continues to reduce reliance on PCFs by:

- *Expanding the availability of specialized Alternatives to Detention (ATD) which are equipped to respond to a larger variety of needs[1];*
- *Providing all three IHCs with infrastructure, personnel, and procedures that permit holding people with even more complex profiles, while ensuring they are held according to national and international norms;*
- *Facilitating voluntary transfers of detained individuals from PCFs to IHCs, including across provinces or regions, and considering proximity to family (in cooperation with the other authorities involved[2]) and*
- *Improving the detention placement assessment process determining if a person with previous criminal convictions is eligible to be placed in an IHC rather than in a PCF, taking into account all available factors that can lead to a more precise assessment of their current behavior and level of risk[3].*

Should CBSA continue placing individuals detained under IRPA in PCFs, in order to reduce the negative impact of such a placement as much as possible, the CRCS recommends that CBSA ensures the individuals are held in specialized units where they are entirely separated from the remaining population held under the Criminal Code, while simultaneously avoiding situations of solitary confinement to achieve such separation. In addition, conditions in these units, as well as access to activities and services, must meet the minimum standards for people held under administrative detention.

The CRCS recommends that the CBSA, regardless of the place of detention, provide people detained under the IRPA with full and timely access to health services covered by the IFHP or equivalent coverage – including an examination by a qualified health care professional as soon as possible following admission. Special attention should be given to meeting the healthcare needs of the most vulnerable individuals, including those diagnosed with mental health conditions and those who have declared a need for mental health support. Moreover, it would be important to consider extending this coverage to people under ATDs.

The CRCS recommends that the CBSA ensure people detained for immigration reasons have access to leisure, cultural and educational activities regardless of their place of detention, and take care of providing reading material in languages understood by detained individuals. Activities such as English and French language training, for example, would be convenient. Access to activities is highly encouraged in a detention context as it is important for an individual's wellbeing, including personal development, physical and mental

[1] Specific vulnerabilities are reviewed in the next section of the present Report "Vulnerable People and People Detained for Longer Periods".
[2] Such as the Immigration and Refugee Board of Canada (IRB) and courts (in cases, where a person charged with a criminal offence is released on bail but remains detained under the IRPA).
[3] Such as the correctional authority's evaluation of their rehabilitation, adhesion to a drug or alcohol rehab program and the level of security where they were placed at the end of their criminal sentence.

health, and social and cultural inclusion. Moreover, activities can contribute to reducing the negative effects of detention by relieving stress and promoting positive interactions with others.

3.3 Access to Legal Guarantees and Procedural Safeguards

Although procedures were in place at all the monitored facilities to provide information at intake, some of the detained people IDMP spoke with mentioned not clearly understanding certain basic administrative procedures such as how to access the phone and how to request a phone card or other basic items. Oftentimes, detained people rely on explanations given by other detained individuals.

Not speaking the same language as facility staff was mentioned as being an issue by detained people, on rare occasions at the IHCs and, more regularly at five (5) PCFs. Although individual staff members may speak the detained person's language, their level of proficiency varied and staff members with the needed language skills were not always available at the time when it was needed. It was reported by detained people that IHC staff and DLOs regularly used interpretation services when needed during interactions.

For detained people not under COVID-19-related isolation, DLOs or other officers carrying out DLO functions mostly remained accessible at the monitored PCFs, either through telephone or in-person visits in non-contact visiting areas. IDMP acknowledges the DLOs' contribution in responding to the needs of people detained under IRPA placed in PCFs when they were able to reach them. In particular, they support detained people with information, especially when there are language barriers, international telephone calls, and access to medical services. It is also important to note that early contact with DLOs facilitates continuity of care for detained people when medical needs are identified.

3.4 Ability to Maintain Contact with Family and Friends

Although, as mentioned in Section 2.5, CBSA and PCFs provided financial support for phone calls, the cost of calls was still reported as an obstacle in maintaining family contact in the three (3) IHCs and seven (7) PCFs, affecting those with lesser resources and/or who need to call countries where calls are more expensive. The fact that it was not mentioned in the other facilities may be because the detained persons present at the time of the monitoring activity did not have relatives abroad.

Telephones were easily accessible in the three (3) IHCs. However, access to them for people remained complicated in at least five (5) PCFs, because of limited time out of cell and/or intimidation by other detained people. Difficult access to telephones affects family contact, but also has an impact on one's ability to contact Legal Aid organizations and lawyers. Not speaking an official language could also impact the capacity to make phone calls, as depending on the telephone system at the facility, instructions for automated services can be limited to English and/or French. Moreover, this may also be a challenge for the person receiving the call as they may have to follow instructions to accept the call.

Recommendations Regarding Procedural Safeguards and Family Contacts

Given the support DLOs can offer, and recognizing ongoing CBSA efforts in the matter, the CRCS recommends DLOs, or other officers with DLO functions, hold regular meetings throughout detention with all people detained under the IRPA and held in provincial institutions, regardless of whether they had previous interaction with other CBSA officers. Special attention should be given to people during intake isolation, medical isolation (droplet precaution), or other types of long-term lockdowns.

The CRCS strongly urges the use of professional interpretation services during key moments of detention, including facility orientations, during medical or mental health consultations, or any other interaction of a confidential or decisive nature at all facilities where people detained under IRPA are held. Unit staff at PCFs should have access to interpretation services, such as those available by phone, to facilitate day-to-day communication with people detained under the IRPA.

The CRCS acknowledges efforts to support contact between detained individuals and their families to mitigate public health measures in response to COVID-19 and recommends these efforts be continued even after the pandemic abates. The improved technology mentioned in the MRAP, such as video conferencing, can lead to cheaper international calls, which is a desirable outcome. The CRCS recommends offering such a service as soon as possible to all people held for immigration reasons, regardless of their place of detention.

While long-term solutions are being developed, the CRCS encourages the CBSA to continue working with PCFs to implement interim solutions to problems related to phone calls.

With regards to contact visits, the CRCS recommends that, when the public health situation permits it, all people detained under IRPA have access to them. If not available at the detention facility where they are held, CBSA should explore offering them offsite – for example at the location of detention hearings when conducted outside the detention facility.

4. Vulnerable People and People Detained for Longer Periods

Responding to the needs of vulnerable people is at the core of the Red Cross and Red Crescent Movement's mandate. While all individuals placed in detention face some level of vulnerability since they depend on the detaining authority to respond to their basic needs, individuals who are most vulnerable in a situation of immigration detention include children and families with children; pregnant individuals; those at risk of violence due to their gender, sexual orientation or gender identity; individuals requiring physical and mental health supports; people with disabilities; the elderly; stateless people; and those with special protection needs, such as refugee claimants, victims of trafficking, and survivors of torture or trauma.

In all cases of detention for immigration reasons, the length of detention should be limited in time and the decision to detain should be re-evaluated regularly. Considerations should include the necessity, reasonableness, and proportionality of detention considering the cumulative negative effect on the individual's wellbeing and, when applicable, the best interests of children impacted directly.

4.1 Vulnerable People and Conditions of Detention

The CRCS recognizes the major reduction in the presence of children detained or accompanying a detained parent[1] in some regions. The Laval IHC, where the most children were present in previous monitoring periods, only notified IDMP of the presence of one child during the period under review[2]. On the other hand, the number of children present in detention in the Pacific Region is comparable to those before the pandemic – three children were reported present in detention during quarters one and two, which is the same number reported in quarters one and two of 2019 – 2020. The presence of children in immigration detention remains concerning.

IDMP observed the presence of people with mental health issues – diagnosed or self-identified – in all three (3) IHCs and at least eight (8) of the monitored PCFs. Specialized mental health support was available at all three IHCs and in most of the monitored PCFs. However, in many cases, it focused on stabilization rather than treatment. Mental health practitioners, such as psychologists, were not present in all the monitored PCFs. Moreover, placement of vulnerable people, such as those with mental health conditions, in restrictive environments like the monitored PCFs creates a greater risk of harm, particularly during the pandemic. The CRCS observed placement of people with mental health conditions in segregation units in three (3) of the PCFs it monitors, which is of concern since these units tend to be even more restrictive. Also, the CRCS was notified that many detained individuals who were suicidal were placed on suicide watch units, which is a segregation regime where a person must wear a tear-proof garment and is under 24-hour surveillance.

4.2 People Detained for Long Periods and Conditions of Detention

The CRCS remains preoccupied with the impacts of prolonged immigration detention, being aware that the harm caused by detention grows with time spent in detention. Also, the capacity to cope with the difficulties of detention varies from one person to another, with vulnerable people being at greater risk. The CRCS observed people detained for more than three (3) months in at least seven (7) of the monitored facilities – some for one to two years[3]. Some of the individuals detained for long periods of time were diagnosed or self-declared suffering from mental health illnesses which is of particular concern.

Recommendations

The CRCS acknowledges CBSA efforts to reduce the detention of vulnerable people and continues to encourage the CBSA to further expand the availability of ATDs in all regions to be able to offer them to a greater number of vulnerable individuals. Moreover, it is recommended to offer ATDs adapted to a greater diversity of people with specialized needs, such as those provided by organizations with expertise in trauma-informed medical and mental health care. Such an investment will allow detaining authorities to safeguard the

[1] IDMP does not give an opinion on policies implemented (such as at the border) that have had an impact on numbers of people detained under IRPA – families in particular – as this is outside of its mandate.
[2] See "Arrests, detentions and removals. Quarterly detention statistics: First and second quarter (Q1-Q2), fiscal year 2020 to 2021" https://www.cbsa-asfc.gc.ca/security-securite/detent/qstat-2020-2021-eng.html
[3] Understanding the 90-day mark as a general indicator used by CBSA to determine the length of detention and not an absolute threshold.

wellbeing of eligible individuals. Specifically, the CRCS recommends developing the capacity to offer ATDs adapted for individuals whose detention is long-term and individuals with specific physical and mental health needs, including those requiring continuity of care after detention.

The CRCS recognizes CBSA's willingness to consider placement in an IHC when detention is deemed necessary. The CRCS believes the use of PCFs to hold people in immigration detention, especially the most vulnerable, to be problematic and that it should be avoided. The PCFs monitored by the CRCS offer limited treatment and support to people detained under the IRPA who have specialized needs, such as individuals with prior trauma or those requiring mental health care. In addition, the resources required to identify and perform ongoing evaluations of vulnerable persons' unique needs were limited in the visited PCFs, including fewer opportunities for interaction with CBSA officers. ATDs responding to the particular needs of vulnerable adults, such as people with mental health conditions, are preferred. When not possible, placement in an IHC may offer several advantages over the PCFs that were visited, such as more attention from staff, more freedom of movement, more opportunities for meaningful contact, easier access to basic services, and a less intimidating infrastructure.

The Canadian Red Cross takes notice of CBSA's response in the MRAP and further recommends the following:

- *The CRCS welcomes the important reduction in the presence of children in detention, noting it does not comment on measures outside detention that may have had an impact on those numbers. The CRCS believes the presence of children in detention settings is indeed precluded by international standards such as those indicated in the Convention on the Rights of the Child, and highlights that the Government of Canada has expressed support to the Global Compact for Safe, Orderly and Regular Migration in "working to end the practice of child detention in the context of international migration," (para. 29(h)) as well as Canadian regulatory frameworks which prioritize the best interests of the child in decision making. The CRCS strongly recommends to end the practice of placing children in detention facilities – whether detained or accompanying a parent or legal guardian. For cases where liberty is not possible, it recommends developing ATDs to permit family unity outside detention since, in a vast majority of cases, it is in the best interest of the child.*

- *The CRCS notes that CBSA has the responsibility to make a determination on whether immigration detention of an individual is warranted and that the decision is first reviewed by another authority after 48 hours in a detention hearing where the CBSA is represented, as in every other hearing thereafter. While understanding CBSA's responsibilities with regards to the protection of the public and the integrity of the Canadian immigration system, it must be noted that the individuals CRCS is mandated to visit are held solely under IRPA because of their immigration status, and not because they stand accused of a crime or are serving a sentence. Given the above, and the deleterious effects of detention – more so when the conditions are particularly restrictive – and given vulnerable people face greater risks of suffering harm because of their detention, the CRCS reiterates its humanitarian concerns regarding the presence of vulnerable people in administrative detention, such as asylum seekers and people dealing with severe mental and/or physical health issues.*

- *The CRCS recognizes that CBSA is developing a comprehensive medical services framework and that basic healthcare is available in every monitored facility – albeit delayed at some PCFs. However, the CRCS highlights that some health care services that are covered by the IFHP supplemental coverage are not available at certain PCFs, such as the services of a psychologist. These and other services are important for all people detained under IRPA who may need them. For example, therapy can enable a person to prevent the behaviors that initially led to a determination of "danger to public", allowing for an alternative solution in situations of prolonged detention.*

Conclusion

The CRCS is an independent, neutral and impartial humanitarian organization. Its mandate, defined in Canadian law and in the Statutes of the International Red Cross and Red Crescent Movement, is to prevent and alleviate human suffering. The methods of the CRCS in detention monitoring are based on best practices and processes of the International Committee of the Red Cross, who have been working to secure humane treatment and conditions of detention for people deprived of their liberty for over a century. As part of the Movement-wide response to humanitarian consequences caused by migration, the CRCS started detention monitoring activities in 1999 and acts according to its Fundamental Principles, providing unbiased observations and recommendations to the Canadian authorities with the aim to safeguard rights and improve the conditions of detention for people detained under the IRPA.

CRCS detention monitoring is administered by the IDMP in accordance with the Contract between the CRCS and the CBSA encompassing the period from June 28, 2017, to July 15, 2019, and extended to February 22, 2021 inclusive; and the period of the Contract from February 23, 2021, to February 22, 2024 inclusive. This report presents the observations and recommendations of the CRCS on immigration detention following fifty five (55) monitoring activities, including thirty three (33) regular monitoring activities and twenty two (22) activities in response to a notification of an event, involving a person detained under the IRPA, at fourteen (14) detention facilities holding persons detained under the IRPA between April 2020 and March 2021.

The findings and the recommendations made in this report are aimed at improving the conditions of detention for people detained for immigration and grouped in the following themes:

- COVID-19, numbers and the four key areas of detention monitoring;
- Detention in the IHCs vs detention in the PCFs; and
- Vulnerable people and people detained for longer periods.

Based on observations, the CRCS makes the following main recommendations to the CBSA within this report:

- Continue implementing measures that have reduced the number of people detained under IRPA;
- Ensure that measures are in place to maintain acceptable detention conditions during preventative isolation, medical isolation in response to COVID-19 outbreaks, and other types of lockdowns;
- Continue to reduce reliance on PCFs through ATDs and placement in IHCs, especially for vulnerable individuals, and adopt measures to eliminate co-mingling in the near future;
- Ensure that persons detained under the IRPA have full and timely access to health services covered by the Interim Federal Health Program (IFHP) or equivalent coverage;
- Ensure that people detained for immigration reasons have access to leisure, cultural and educational activities regardless of their place of detention;
- Prioritize DLOs contact with all people held in PCFs and ensure the use of professional interpretation services during key moments of detention;
- Offer video conference services to all people held for immigration reasons, regardless of their place of detention, and ensure people detained have access to in-person contact visits, once the public health situation permits it; and
- Finally, end the practice of placing children in detention facilities and further develop ATDs allowing for family unity outside detention.

The CRCS stands ready to discuss the findings made in this report with the CBSA and to provide objective feedback and advice.

Relevant Standards

ATP	United Nations (UN) Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the UN Convention against Transnational Organized Crime (Anti-Trafficking Protocol) (2000)
ACHR AP	Organization of American States (OAS) American Convention on Human Rights Additional Protocol in the area of Economic, Social and Cultural Rights (1988)
BPP	UN Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment (1988)
BR	UN Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the "Bangkok Rules") (2010)
CCRF	Canadian Charter of Rights and Freedoms (1982)
CMW	UN Convention for the Protection of the Rights of All Migrant Workers and Members of their Families (1990)
CRC	UN Convention on the Rights of the Child (1989)
EC	European Committee, Statement of Principles Relating to the Treatment of Persons Deprived of their Liberty in the Context of the Coronavirus Disease (COVID-19) Pandemic (2020)
GCM	Global Compact for Safe, Orderly and Regular Migration (2018)
GCR	Report of the United Nations High Commissioner for Refugees, Part II: Global Compact on Refugees (2018)
ICCPR	UN International Covenant on Civil and Political Rights (1966)
ICRC	International Committee of the Red Cross on the Protection of Migrants in Light of the COVID-19 Pandemic
IASC	Guidance on COVID-19: Focus on Persons Deprived of Their Liberty (2020)
MRAP	CBSA's Management Response and Action Plan (2018-2020)
PBPPDLA	OAS/Inter-American Commission on Human Rights (IACHR) Principles and Best Practices on the Protection of Persons Deprived of Liberty in the Americas (2008)
RPJDL	UN Rules for the Protection of Juveniles Deprived of their Liberty (1990)
SMR	UN General Assembly, UN Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules): Resolution adopted by the General Assembly, 8 January 2016, A/RES/70/175
UN	United Nations Working Group on Alternatives to Immigration Detention, COVID-19 & Immigration Detention: What Can Governments and Other Stakeholders Do?
UNHCR-DG	UNHCR Guidelines on the Applicable Criteria and Standards Relating to the Detention of Asylum-Seekers and Alternatives to Detention (2012)
VCCR	Vienna Convention on Consular Relations (1963), Article 36