DETENTION IN CANADA OF ASYLUM CLAIMANTS FOR IDENTITY DETERMINATION: A CRITICAL REVIEW OF THE LITERATURE PERTAINING TO CANADA'S IMMIGRATION DETENTION CENTRES

By

Nadjibullah Alamyar, B.A (Hons) University of Toronto, 2014

A Major Research Paper

Presented to Ryerson University

In Partial Fulfillment of the Requirements for the degree of

Master of Arts

In the Graduate Program in Immigration and Settlement Studies

Toronto, Ontario, Canada, 2016

AUTHOR'S DECLARATION FOR ELECTRONIC SUBMISSION OF A MAJOR RESEARCH PAPER (MRP)

I hereby declare that I am the sole author of this Major Research Paper. This is a true copy of my MRP, including any required final revisions, as accepted by my examiners.

I authorize Ryerson University to lend this MRP to other institutions or individuals for the purpose of scholarly research.

I further authorize Ryerson University to reproduce this MRP by photocopying or by other means, in total or in part at the request of other institutions or individuals for the purpose of scholarly research.

I understand that my MRP may be made electronically available to the public.

Nadjibullah Alamyar

Detention in Canada of Asylum Claimants for Identity Determination: A Critical Review of the Literature Pertaining to Canada's Immigration Detention Centres

© Nadjibullah Alamyar

Master of Arts 2016
Immigration and Settlement Studies
Ryerson University

ABSTRACT

This paper maps the unconstitutionality of Canada's legalisation regarding asylum claimants. In particular, the paper examines the policies that allow asylum claimant's detainment in the absence of identification. The aim of this study is twofold. First, it establishes through a meta-synthesis of the literature, gap that exist in the study of immigration detention centers. These studies clearly demonstrate that immigration detention centres are similar to prisons but significantly do not consider the constitutionality of identification requirements that subject asylum claimants to detention. Second, the study demonstrates through a human rights approach that Canadian policies which require refugees to prove their identity prior to claim adjudication violates the asylum claimant's Charter and fundamental human rights. Canada's approach, which makes asylum claimants responsible for proving their identity reintroduces the practice of *reverse onus*. Hence Canadian immigration policies enacted in 2001 (post-9/11), are in violation of the Canadian Charter of Rights and Freedom and in violation of international human rights laws. I suggest that if the government is serious about the human rights of asylum claimants it must create policies that ensure the protection of refugee rights in Canada.

Key Words: *Immigration detention centre, Canada, asylum claimants, Protecting Canada's Immigration System Act (PCISA), crimmigration, human rights, refugee rights*

ACKNOWLEDGMENT

I would like to thank my supervisor, Dr. Anver Saloojee, for his valuable guidance as I developed this project and throughout its progress. I am grateful for Dr. Saloojee's commitment to working with me and supporting me in finishing this Major Research Paper. He was a great supervisor and always made himself available to me when I needed him. I would also like to thank my Second Reader, Dr. Myer Siemiatycki, for his thoughtful suggestions for this paper. I would also like to acknowledge other faculty in the ISS program who I have had the privilege of learning from over the past year. I especially want to express my appreciation to my program director, Dr. Vappu Tyyskä, whose encouragement gave me the confidence to complete my degree. Throughout my time at Ryerson University Dr. Tyyskä was a sensitive and supportive mentor.

To my family and friends who played a major role in my success — Seyfi Atasoy, Christina D'Almeida, Mary Sanderson and the McCauleys — thank you for encouraging me, for being always present in spite of your busy lives, for supporting me and believing in me. Although, I do not have members of my own family in Canada you made me feel part of your families and allowed me to draw on your resources. I am extremely thankful for your support.

This paper is dedicated to those who have been denied their human rights.

From Nelson Mandela

"To deny people their human rights is to challenge their very humanity…"

Table of Contents

List of Acronyms

CBSA — Canadian Border Services Agency

CIC — Citizenship and Immigration Canada

Charter — Canadian Charter of Rights and Freedoms

DCO — Designated Country of Origin

PCISA — Protecting Canada's Immigration System Act

UDHR — Universal Declaration of Human Rights

IRB — Immigration and Refugee Board

UNCRSR — United Nations Convention Relating to the Status of Refugees

UNHCR — United Nations High Commissioner for Refugees

SCC — Supreme Court of Canada

Introduction

This paper will analyze whether Canada's strict identification rules for eligibility to claim refugee status violates our international obligations and infringes the Canadian Charter of Rights and Freedom (Charter). The paper will also analyze whether detainment and deportation can be reasonably justified in a free and democratic society. In order to demonstrate this, I first evaluate the gaps in the literature that analyzes immigration detention centre policies and physical structure. More precisely, I conduct a meta-analysis through the lens of a critical discourse analysis (CDA) on immigration detention centres highlighting the similarities between these centres and prisons. Simultaneously, I undertake a review of the immigration detention literature identifying what has been discussed thereby illustrating what has been neglected. After establishing what detention centres are, I analyze Canadian identification policy for eligibility to claim refugee status and how it arguably causes tension between both international convention and the Canadian Constitution. Finally, I provide recommendations on how to ensure and protect refugee rights. In doing so, the paper's overall aim is to contribute to the crimmigration school of thought.

Crimmigration is defined as the management of immigration that resemble the management of criminals (Stumpf, 2006). Historically, immigration has been managed through administrative laws. However, post-9/11, 2001 irregular migration policies, though not governed under the Criminal Code of Canada has the effect of criminalizing asylum claimants. For instance, if someone cannot provide proper identification at the port of entry they are subject to detention. These laws allow border officials to detain and deport people who cannot provide identification upon arrival. Similarly, within Canada, police officers accompanied by immigration officials can detain those whom they suspect are here illegally if they are unable to

produce official documentation pursuant to the *Protecting Canada's Immigration System Act (PCISA)*.

A 2011 report conducted by Delphine Nakache for the United Nations High Commissioner for Refugees (UNHCR) found that twenty one percent of innocent "refugees" (i.e. non-criminal asylum seekers and refused refugee claimants) are held in the immigration detention centres in Canada. The report finds that in Canada the primary reason for holding individuals in detention centres is that either their refugee claims are denied or they do not possess proper identification papers upon arrival (Nakache, 2011). Individuals can also be detained if they are unable to provide police officers identification documents during a police stop and search event. A CBC News 2014 report found that often police intentionally request Canadian Border Services Agency (CBSA) officers to patrol with them in the event they catch someone without documentation so they can arrest them immediately until identity determination is completed (CBC, 2014).

Alternatively, people who come from Designated Country of Origin (DCO) - a list of "safe" countries produced by the minister of Immigration and Citizenship Canada - are ineligible to claim refugee status. These rules are also set out in the *PCISA* (2012). The *Act* permits detainment and deportation akin to those unable to provide any identification. According to the guideline for detention,

> members of the Immigration Division must consider [detention, short or indeterminate when] the Minister is of the opinion that the identity of the foreign national — other than a designated foreign national who was 16 years of age or older on the day of the arrival that is the subject of the designation in question — has not been, but may be, established and they have not reasonably cooperated with the Minister by providing relevant information for the purpose of establishing their identity or the Minister is making reasonable efforts to establish their identity (Chairperson's Guidline 2, 2010).

This implicitly allows the indeterminate detention of asylum claimants until their identity is determined.

The main premise of this research paper relies on the universalistic human rights approach outlined in section 3 of the Universal Declaration of Human Rights (UDHR) which states "everyone has the right to life, liberty and security of person" (United Nations, 1948). I argue that recently enacted Canadian immigration policies, which allow indeterminate detention of individuals who's identity cannot be determined, violate the Charter rights of asylum seekers and are contrary to human rights laws. Though detaining foreign nationals in the absence of identity is authorized under the Canadian immigration legislation, they arguably cause tension with the ss. 7 and 9 of the Charter[1], and articles 3, 5 and 6 of the Universal Declaration of Human Rights (UDHR)[2], and article 31 of the United Nations Convention Relating to the Status of Refugees (UNCRSR).[3] Hence the final part of this MRP is concerned with whether Canadian policies that allow indeterminate detention of "suspected asylum claimants" in the absence of identification are in compliance with the Charter, UNCRSR, and UDHR provisions pertaining to human rights.

[1] Charter: s. 7 has the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice. S.8 Everyone has the right to be secure against unreasonable search or seizure. S. 9 Everyone has the right not to be arbitrarily detained or imprisoned (Constitution Act 1982, 2012).

[2] UDHR: Article 3, Everyone has the right to life, liberty and security of person. Article 5, No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. Article 6, Everyone has the right to recognition everywhere as a person before the law (United Nations, 1948).

[3] UNCRSR: Article 31: Refugees unlawfully in the country of refuge (a) The Contracting States shall not impose penalties, on account of their illegal entry or presence, on refugees who, coming directly from a territory where their life or freedom was threatened in the sense of article 1, enter or are present in their territory without authorization, provided they present themselves without delay to the authorities and show good cause for their illegal entry or presence. (b) The Contracting States shall not apply to the movements of such refugees restrictions other than those which are necessary and such restrictions shall only be applied until their status in the country is regularized or they obtain admission into another country. The Contracting States shall allow such refugees a reasonable period and all the necessary facilities to obtain admission into another country.
Though these rights are enlisted in different documents, they all have one implicit purpose, and that is to ensure the freedom of movements of human beings, and prevent governments from detaining its own citizens or foreign citizens in the absence of a crime (United Nations Human Rights Office of The High Commissioner, 1951).

In order to establish more clearly my central premise, I begin by identifying what rights refugees have, and in what document these are codified. Second, I explore Canadian policies that provide the legal framework for who can detain an asylum claimant in and on what grounds. Finally, I examine whether the legislation that governs the detainment of asylum claimant is constitutional, and what can be done to minimize the risk of detaining asylum claimants. While these are important questions to be explored, the current literature on immigration detention centres fall short of evaluating it.

Methodology and Framework

A thorough review of the literature on immigration detention centres finds the literature fails to adequately address the implications of the identification and whether they comply with human rights and the Canadian Charter of Rights and Freedoms (Charter). This inevitably leaves a gap in an important area of immigration law with significant impact on the life, liberty and security of person of asylum seekers. This paper aims through a critical discourse analysis (CDA) to identify some of the reasons behind the immigration detention centres in order to determine whether detaining asylum claimants and requiring them to prove identity in the absence of a criminal act is in accordance with the principles of fundamental justice.

According to Le, Lê, & Short (2009), critical discourse analysis (CDA) is an interdisciplinary paradigm in social sciences that "aims at unearthing the intricate relationship between power, dominance and social inequality in different social groups" (Le et al., 2009, p. 14). Critical discourse is concerned with how discourse produces inequality, therefore adhering to a methodology that describes, interprets and explain social problems, with an ultimate goal to transform it (Le et al., 2009). This methodology "utilizes a flexible analytical strategy … based on comparison, abstraction, observation of similarities and differences among the original studies, while trying to retain contextual influences and detail in the findings, such as rare findings" (Flick, 2014, p. 16).

Behind the 'label' CDA very different approaches hide, which are not easy to summarise. It is even difficult to discern a common denominator, as the approach generally implies the study of language. Nevertheless, scholars like Howarth and Griggs (2012) Howarth & Griggs (2012) argue that there are approaches where the term discourse is much more than language. Howarth and Griggs (2012) utilize CDA as a 'problem-driven approach' based upon 'an internal relation between explanation, critique and normative evaluation' (p.323). According to Fairclough

(2013), "Howarth and Griggs formulate the 'first analytical task' as 'to problematize the various problematizations of the issue under consideration, so that we can construct a viable object of research' (p. 185). Since, the main premise of my research lies in a universalistic human rights perspective that assumes all human beings have the right to not be deprived of their freedoms, it is important to problematize the effects of policies like identification requirements that subjects asylum claimants to detention. For Fairclough (2013) utilizing CDA beyond discursive analysis in policy studies is helpful at two levels. First, in suggesting that critique focuses upon the 'problems' that people face, its starting point is what various groups of people take to be problems, though these cannot be taken at face value: critique asks "what the problems really are with regard to some issue" (p.185).

In the case of immigration detention studies, works like (Kronick & Rousseau, 2015; Larsen & Piché, 2009) rightly expose problems with either the discourse about, or the negative effects of the discourse about immigration detention centres. But these authors do not analyse the implication of policy outcomes that result from these discourses. For example the discourse that Kornick and Rousseau (2015) analyzed ultimately produced identification requirements that subject people to detention. Nevertheless, Kronick & Rousseau's (2015) analysis is only based on how the discourse in House of Commons debates placed the state rather than the refugees in the need of protection. Kronick & Rousseau's (2015) object of inquiry is parliamentary conversations that produce and justify certain social practices. Here Kronick & Rousseau (2015) consider the language used in the house as problem, but do not go beyond that to, for instance, map whether the content produced through these discourses are problematic. The more prudent question that could critique policy outcome would be: do Canadian parliamentarians still respect asylum seekers' Charter rights when implementing policies?

The second level of CDA analysis that Fairclough (2013) points out as helpful is "in suggesting that critique is analogous to practical engagement with the problems of social life … – it 'problematizes problematizations' in their formulation" (p. 185). What Fairclough (2013) implies is that if researchers wants to extract the essence of the problem they would move beyond the discourse and ask further questions about content produced through problematic discourse. Larsen & Piché (2009) illustrate the problematic tactics of the federal government that adopted a bureaucratic discourse to allow them to use Kingston Immigration Holding Centre (KIHC) located in the Millhaven maximum security prison in Bath, Ontario Canada as an immigration detention centre:

> "KIHC can be understood as the product of a series of decisions designed to functionally blur the spaces of the camp and the prison while maintaining their technical distinction". This process is supported by public and internal government discourses that emphasize themes of exceptional necessity and bureaucratic pragmatism" (Larsen & Piché, 2009, p.205).

Here Larsen and Piché (2009) rightly focus only on a surface level analysis of a discourse that is problematic, but do not problematize the outcome by asking questions about policies that subject individual to imprisonment in these institutions.

To complement the previous studies conducted about immigration and detention centres I explore my research objectives through a qualitative meta-synthesis, which is a "systematic scoping review of a wide range of literature resources" (Drolet, Burstein, & Sampson, 2014, p. 8). Herein I first undertake a review of secondary resources to determine and expose the gaps in the academic literature. It is critical to point out that in the literature that problematizes the existence of immigration detention centres, limited attention is paid to the tension between Canadian identification requirement and the violation of asylum seeker's Charter and human rights. Content from the United States (US), United Kingdom (U.K.) and Australia will be

referred to, to illustrate how the nature of detaining foreign citizens has become more stringent post-9/11. Following this I examine Canadian government policies pertaining to immigration detention centres and identification requirements, and contrast that with Charter rights, and United Nations (UN) conventions pertaining to refugees. This is supplemented through the incorporation of secondary academic literature.

It is my contention that a systematic review of the literature pertaining to immigration detention centres, as discussed by John Creswell (2013) in *Qualitative Inquiry and Research Design Choosing Among Five Approaches,* about strict identification requirements for refugee claimants, has not been conducted . According to Creswell (2013), a qualitative research design parallels the scientific research method that includes, "the problem statement, the [research question], the data collection, the results and the discussion" (p. 50). For the purposes of this study, I conduct a secondary data analysis, which "is to address new research questions by analysing previously collected data" (Long-Sutehall, Sque, & Julia Addington-Hall, 2011, p.336). A secondary data analysis allows the researcher to explore a broad data source of online available resources and books to discover the dearth of research on the identification requirements.

To answer the research question stated at the outset of this paper, documents from the online government websites, Ryerson University Library, which includes scholarly books, journals, and news articles are reviewed using terms and combinations outlined in Appendix A. In order to specifically determine the current policies related to immigration detention centres the Canadian government website (www.cic.gc.ca) is explored utilizing words such as immigration detention policy, immigration detention review, *Protecting Canada's Immigration System Act (PCISA)*. To further improve my academic resources search I employ advanced search

techniques such as nesting Boolean search operators and truncation (*). This method is employed to both broaden and focus the scope of search terms (Drolet, Sampson, et al., 2014, p. 9). One of the benefits of database searches is that it contains research results with different research methods previously used to examine immigration detention centres. Utilizing such a method will allow for further problematization of the fact that in more than 100 items evaluated in this review, identification requirements for eligibility to claim refugee status has not been thoroughly considered in the literature. According to Scott Graves (2010), the primary benefit of conducting a database analysis is cost saving, and access to a broad range of perspectives and research material about a research population. One of the main limitations of this data collection method is the fact that the secondary researcher may not be able to analyze all of the existing data (Graves, 2010). However, by using the Boolean search method one can aim to get as precise data as possible.

Furthermore, I refer to relevant Canadian jurisprudence that can have an impact on the identification requirements for asylum claimants. For instance, the Supreme Court of Canada (SCC) declared unconstitutional the security certificate process, which prohibits the named individual from examining evidence used to issue the certificate (Charkaoui v. Canada, 2008). According to SCC the *Act* violates the right to liberty and *habeas corpus* under ss 7 and 9 of the Charter requirements for detention under certificate (Charkaoui v. Canada, 2008). Though Mr. Charkaoui was a permanent resident at the time he was assigned a security certificate, nevertheless the ruling of SCC set precedent for the cases that are non-permanent resident, since the highest court of Canada has decide how the government conduct itself when detaining individuals.

Ryerson's library databases are searched sources that evaluate policies regarding

detention centres. Entering the terms from Appendix A in search all function of the Ryerson Library produces 2,190,360 sources, among which exist a plethora of articles that are not relevant to policies pertaining to immigration detention centres. In order to extract data relevant to my research question, sources are excluded based on publication date from 2005 to 2015. The reason I chose to review material published within last decade is that there is a general consensus among scholars like (Bosworth & Slade, 2014; Carasco, 2007; De Genova & Peutz, 2010; Khosravi, 2009; Pratt, 2005) that detention policies became more stringent after post-9/11. To gain more relevant articles, and reduce resources found to a number that is manageable to analyze, I exclude material found based on subject. Only subjects relevant to immigration detention policy are analyzed. These include government, statistics, political science, social science, law and sociology. These subject matters are researched using terms and combinations, outlined in Appendix A.

The reason these terms and combinations are searched is to ensure no article that discusses identification requirement or complement a discussion of identification requirements for asylum claimants is missed. This resulted in 11989 sources that contain terms outlined in Appendix A. The search is conducted in databases outlined in Appendix B. To make sure that relevant articles are selected for my research project the results are further evaluated according to questions outlined in Appendix C. These questions assisted me in determining whether the articles discovered are answering my research question. With the help of questions in Appendix C, I determine the importance of theresearch materials discovered, to my overall discussion. All the resources cited in this research were determined through method illustrated above. This exercise allowed me to draw conclusions from findings that would otherwise be lacking significance.

Literature on the Evolution of Detention Centers in Canada and Abroad

Although limited data is available which establishes the correlation between immigration detention centres and identification requirements under *the Protecting Canada's Immigration System Act (2012),* data from the United Kingdom ("U.K.) and Australia demonstrates how the nature of immigration detention centres have changed. Specifically, how detention has become a tool to control irregular migration. While the Canadian government claims that the formal goals of prison and detention centers are strikingly different (CBC, 2012), scholars who have analyzed these centres argue that the regime of holding non-citizens in a cell is similar to imprisonment. More importantly, studies shows that in recent years refugee imprisonment is used as a method to deter irregular migration (Aas & Bosworth, 2013), as opposed to detention for the safety and security of the receiving county's citizens.

One persuasive theme that emerges in the literature is the notion of exclusionary practices as a "punitive response" to irregular immigration. The combination of the custodial conditions of detention and infinite period of detention (as the Canadian government policy suggest) create a regime that is similar to the prison where criminals are held (Bosworth & Slade, 2014; Carasco, 2007; De Genova & Peutz, 2010; Khosravi, 2009; Pratt, 2005). Immigration detention's implicit aim is to deter asylum claimants from applying for refugee status. States imprison foreign nationals or non-citizens in immigration detention centres (which are often located in old prisons, or prison) to realize political objectives, such as reducing the inflow of poor migrants into countries despite the fact that the practice violates national and international human rights laws (S. J. Silverman & Massa, 2012), .

History of Detention Centers

The existing literature deals with the question of who is detained in these centres, for how long, and what the circumstances are in the detention centres. One perturbing fact that emerges is

that the numbers of detainees and detention centres are growing. Another fact is that often detainees are held in prison or prison-like institutions pending their identification confirmation and case judgment. Finally, Canada has followed other countries that detains individuals without due process for an indeterminate time under the *IRPA* (Chairperson's Guideline 2, 2010). Yet, no precise data exist that describe in a step-by-step approach the evolution of Canadian policy. Studies from abroad provide a glimpse into how these policies have changed from a system of protecting safety and security to one that assumes foreigners to be guilty till proven innocent. All these changes have evolved from a system that focuses on banning those who would harm the national security of the country, to regulating irregular migration through imprisonment.

To that end, Wilsher (2012), provides an historical analysis of the rise of immigration detention centres in the United States (US), and in countries with common law jurisdictions, such as the United Kingdom (U.K.), and Australia. The author suggests that the current practice is such that majority of innocent people are detained until they are cleared by the FBI and other security organizations, — a tedious process that can take for over 90 days to get clearance. In these situations bail is not granted, even if the immigration judge allows these individuals to be released (Wilsher, 2012). In the US for instance post-9/11, 2001 there was a spike in detention due to *de facto* "declaration of war" on irregular migration. This declaration considers anyone a terrorist until cleared. In this era about 5000 people were detained and only one person has ever been convicted of "supporting a potential terrorist plot" (Wilsher, 2012, p. 234). Wilsher argues that initially immigration detention centres were reserved for wars or national security situations, which were based on an 'alien power perspective' (Wilsher, 2012).

This perspective can be broadly understood as a policy-based decision that vindicates the deportation or prevention of enemy spies. According to Wilsher (2012) proponents of the alien

power approach were of the opinion that the government should have the "power to detain for the purposes of deportation" (p. 100) to protect national security. They believed that by detaining those who can harm national security, governments could ensure public safety. However, in the contemporary era, due to a misrepresentation of the facts by politicians, it is believed that controlling immigration is to ensure public safety.

This is illustrated in the work of Kronick & Rousseau (2015), who evaluated the discourse used in the Canadian parliament to shift the focus from an approach to 'refugees deserving protection' to an approach that 'states needs protection'. The authors argue that in the House of Commons politicians through discourse created two mutually excluded classes of refugee claimants, those who are legitimate and those who are illegitimate. Though these classification were politically motivated, the appeal to protecting legitimate refugees provided the moral compass to support the bill that eventually imprison the asylum claimant's children (Kronick & Rousseau, 2015).

Similarly, Aliverti (2013) in *"Crimes of Mobility Criminal Law and the Regulation of Immigration"* argues that in the United Kingdom the laws that started regulating the entry of foreigners were first enacted in 1793 after the French Revolution. The idea behind such a law was to prevent French people from entering British territory. It was believed that French nationals would enter England and advocate for atheism and anarchism (Aliverti, 2013, p. 12). The purpose of these acts was to protect the British identity and maintain social order. Conversely, in recent years conservative and anti immigration politicians use similar rhetoric that implies immigration weakens the security of a country, and try to justify stringent immigration policies that limits migration as opposed to protecting safety and security of its citizens.

In Canada laws like Bill-C4, introduced by the Canadian government in 2011, which implement mandatory detentions complicate the asylum seeking process (MacIntosh, 2012). Bill C-4 allows the government to detain individuals, for a minimum of one year, when an immigration officer suspects the individual of having committed a crime, even if they were not charged or convicted (Cej, 2012). An individual can also be detained for motives other than terrorism, these include absence of proper documentation at the point of entry, or other reasons, such as committing a Criminal Code offense while a permanent resident (Carasco, 2007), a visitor or protected person and lying to an immigration official (e.g. immigration fraud). Here, detaining immigrants to protect national security is seen as a useful tool to manage immigration under the guise that these suspects are a threat to the security of the country (Aliverti, 2013). In this context the line between a criminal and terrorist is blurred: a foreign citizen who commits a petty crime is automatically considered a terrorist. Similar crimes committed by national citizens are not likely to carry the same stigma or penalty. Aliverti (2013) uses the term "Crimmigration" to refer to this phenomenon.

Crimmigration: the Current Detention Regime

Crimmigration theorists note that while historically immigration policies and practices fell under the ambit of administrative law, in recent years criminal laws have been predominately used to accomplish this objective. It is suggested that "border control – the regulation of both territory and group membership – has subjected a growing number of people to detention and expulsion" (Barker, 2012, p. 113). Generally, people who are detained in immigration detention centres are foreign citizens, and refugees who fled their home countries because of torture (Carasco, 2007). This is in stark contrast to the government's claim that suggests only criminals, illegals and those who are a threat to national security, are held in these centres (CBC, 2012).

It is argued that a move towards harsh punishment of illegal migration is achieved through the use of discourse that create a dichotomy between foreign citizens as "legitimate" (e.g. refugees, skilled migrants, business travellers and tourist who come possessing proper documentation) and "illegitimate" (e.g. bogus asylum claimants, unskilled and poor economic migrants and foreign ex-offenders, and those who enter a country without official documentation, or illegal documentation and stay) (Kronick & Rousseau, 2015). Such a dichotomy contributes to an overall negative view of irregular migration as "crime importers" (Wortley, 2009), and depicts detention as the appropriate response (Aliverti, 2013), regardless of whether that detention violates their basic human rights.

If on detention the person is unable to confirm their identity deportation becomes the oft-exercised option. Deportation therefore serves as an ultimate confirmation of national identity, and detention affixes the threat of deportation to the bodies of the foreign citizens, even if they are released (Khosravi, 2009; Schuster and Majidi, 2013). Such practices trap refugees in a dilemma where neither the host nation has granted them residency or citizenship, nor will their home country accept them back. Thus, the individuals have no other option but to remain in the immigration detention centres until they are permitted to live as citizens (Schuster & Majidi, 2013).

For example, in the U.K. courts have continued to allow lengthy detentions in cases of convicted criminals whose deportation is delayed (Wilsher, 2012). In Canada even if a person is not convicted they can be detained as long as the Minister of Immigration and Citizenship and the Minister of Public Safety wish to hold them (Carasco, 2007). Even in cases where these people have sought help they will not be granted permanent residence or citizenship until the Government is entirely assured that they will not be a threat to the country (Carasco, 2007).

It is argued that this safety assessment by politicians or the ministers responsible for immigration and citizenship, safety and security, and justice and overarching practice of detention is largely, if not solely, politically motivated. Accordingly, it is one of the main reasons behind the rising numbers of detention centres in historically "immigrant nations". These are countries where "the volume of immigrants is high, barriers to entry low, and naturalization is encouraged" (Wortley, 2009, p. 350). One reason why politicians are in favour of this increase in detention centres is premised on the immigration importation model. This model asserts that "individuals make the decision to migrate with the explicit objective of engaging in criminal activity within the receiving country" (Wortley, 2009, p. 352). Although no empirical evidence has been provided to support the importation model. This model still holds considerable weight especially in mainstream media who are able to perpetuate "public fear", especially after 9/11. This phenomenon is known as a "moral panic".

Stanley Cohen originally popularized this concept in the 1980s. He analyzed media, public, and state responses to clashes between youth gangs that took place in Clacton and other resort towns along England's south-eastern coast. Cohen argued that a moral panic is an instance of public anxiety or alarm in response to a problem created by the elites and regarded as threatening to the moral standards of society (Cohen, 2002). In the context of immigration detention centers, 9/11 was a defining moment in the history, which created a moral panic about immigration. The question remains whether moral panic is sufficient to enact policies that violate refugee's human rights. Yet restrictive immigration policies and practices are adopted to respond to the panic that subsequently emerged post-9/11, 2001. For example, in England there was the enactment of anti-terrorist legislation where "an order of deportation might be taken [against someone who is suspected of terrorism], but could not be executed either temporarily or

indefinitely" (Aliverti, 2013, p. 159). Similarly, Canada enacted the *Anti-Terrorism Act* immediately following the attacks which allowed for indeterminate detention of those accused of terrorism (MacIntosh, 2012).

In Canada, the *Anti-terrorism Act* was enacted to prevent "terrorist attacks and meet the four objectives:

1. to prevent terrorists from getting into Canada and protect Canadians from terrorist acts;
2. to activate tools to identify, prosecute, convict and punish terrorists;
3. to keep the Canada-U.S. border secure and a contributor to economic security; and
4. to work with the international community to bring terrorists to justice and address the root causes of violence (Department of Justice, 2001).

These objectives were justified through the discourse of public safety and protecting the nation from terror attacks plotted by foreign citizens. For instance, in the debate on the *Anti Terror Act*, the then Prime Minister Harper stood in the House of Commons and claimed that the protection of Canadians is his highest duty and will do everything to his power to stop foreign criminals (Canuck Politics - Original Channel, 2007-2008)) citing the Air India attack to justify the bill. Though the Air India bombing occurred outside Canada. It is suggested in the literature that the terrorist attacks made people believe that no person can be trusted and hence there has to be strict checking of each person who immigrates to Canada (Aliverti, 2013; Pratt, 2005; Wilsher, 2012). Politicians seized this opportunity for political gains and tried to enact as many harsh policies as possible irrespective of whether or not they violate the rights of asylum claimants. In this regard detention of foreign citizens until they are cleared becomes the normal practice of managing immigration even in the absence of clear evidence of malicious intent.

Immigration Detention as Prison

Findings suggest that "detention centres are a powerful, physical manifestation of exclusionary state practices, which work not only to contain mobility, but also to reconfigure and

relocate national borders" (Mountz, Coddington, Catania, & Loyd, 2013, p. 530). Supporters of detention centres are of the opinion that reducing foreign nationals' liberty and freedom is an effective way to deter illegal immigration to the US, U.K., Australia, Canada, and other immigrant-receiving countries (Pratt, 2005; Silverman & Massa, 2012; Mountz et al., 2013). Generally, the legitimacy of enforcing harsh penalties on foreign citizens is justified under the argument that it "protect[s] the integrity of the country's border controls" (Aliverti, 2013, p. 110). Moreover, immigration control practices restricting who can enter a country and who cannot is a way that states exert their sovereign rights (Wilsher, 2012).

In analyzing the national sovereignty argument, Hagan, Levi, & Dinovitzer, (2008, p.97) suggest that immigrants are subject to symbolic violence because immigrants exist in a 'situational form of delinquency' in the eyes of the state, where a trial of an immigrant becomes a trial about immigration itself. Since the state is discomforted by the threat immigrants pose to the meaning of 'nation', the government uses exclusionary practices of law to enhance its identity by punishing irregular immigrants more harshly than its own citizens, or regularized migrants. This rationale is perhaps best summed up in Barker's (2012) work wherein she asserts that states use exclusionary practices against perceived others to reaffirm state sovereignty and citizenship. As a result the number of detainees in immigration detention centres are increasing rapidly.

The implementation of "mandatory detention" laws are one salient example of a state's exclusionary practice. Here law enforcement agents can order the deportation of foreign citizens who commit crime in a host country (Bosworth, 2012, p. 126), or who are considered a threat to national security, thereby increasing the demand of detention centers. This form of legislation allows immigration officers in England and CBSA officers in Canada to take custody of

suspicious foreigners who try to enter a country without proper identification documents (Gryll, 2011). These developments in law have led to an increase in the number of detainees. In Canada, the number of detainees has risen 33% from 2004 to 2009 (Government of Canada, 2011).

Year	Detentions	Removals
2004-2005	10,774	12,006
2005-2006	11,663	11,362
2006-2007	12,714	12,636
2007-2008	13,987	12,315
2008-2009	14,362	13,249

Source: IED "Detentions at a Glance Fiscal Years 04-05 to 08-09" and "Removals at a Glance Fiscal Year 2008-2009" (Government of Canada, 2011).

In the same period there has been an increase of 10% in the number of removals. These figures clearly, illustrate that Canada detains more people who are not supposed to be detained. Although there is no data that categorizes detainees based on status, and reason for detention, it can be argued that holding innocent individuals in detention centres in the absence of a crime is an example of states punishing foreign citizens in the interest of pursuing political goals, such as reducing immigration, thereby appealing to the populist notion that reducing immigration reduces crime (Barker, 2012).

As the result of recent policy changes, which made the detention of foreign nationals easier, studies suggest that there has been an overflow of detainees who cannot be held in detention. The Canadian government, Gros and Paloma argue, uses prison to manage these detainees (Gros and Paloma, 2015). Canada detained 9571 individuals in 2012 – 2013, but has only three immigration detention centres that can house a total of 369 detainees (truthaboutdetention.com). These centres are located in Toronto (195), Montreal (150) and

Vancouver (24). In the rest of the country the authorities detain individuals in prisons - in total Canada had 143 detention sites in 2013 (truthaboutdetention.com). Historically Canada did not detain asylum claimants, however in recent years as the result of mandatory identification requirements upon arrival asylum claimants are held in detention until identity is proven. An International Coalition Against Detention report suggests that there is an upward trend in time spent in detention centres (Hussan, 2014). Canada currently detains people for longer than 6 months (truthaboutdetention.com). These trends are not particular to Canada but are part of a global trend.

For instance Wilsher (2012) argues that in the United States, until reforms were set in place, detainees were not held longer than six months after a final deportation order. Under these same laws, refugees were held temporarily in detention centres for the purposes of resettlement (Wilsher, 2012). Thus, when detention centres first emerged they were used for two purposes: the first was to help refugees resettle, and the second to prevent enemies from entering the US. Today, however, non-citizens not possessing proper identification or those who have committed a criminal offense can be detained for an unspecified time until being deported or allowed entry (Carasco, 2007; Wilsher, 2012; Pratt, 2005; Aliverti, 2013; Bosworth, 2012; and Hernández, 2013) .

Critical Review of the Literature, what is missing?

Whilst all the authors provide evidence for the rise of immigration detention centres, there is some inconsistency in the data. In Canada, the number of detainees has decreased from 12,714 in 2005-2005 to 9,571 in 2012-2013 (truthaboutdetention.com). It is unclear whether Canada's spike in 2005-2006 is the result of policy change or the sheer number of people who came to Canada. It is also not clear whether the decrease is in the number in 2012 – 2013 is because people who coming to Canada possess the appropriate documentation that enable them

to live in Canada, or whether these are all people who do not possess documentation at the port of entry.

Similarly, Wilsher's (2012) suggestion that 5,000 people were detained post-9/11 in US, as the result of *de facto* war declaration does not clarify how many were detained at the port of entry. Further, the author does not categorize the group based on status. Wilsher (2012) includes all foreigners in detention centres, whether they are refugees, illegal immigrants, or foreign criminals. In fact there are reports that in the US by 2009, the country's total immigration-related detention capacity was 33,400, up from 27,500 in 2006 and 6,785 in 1994 (Aliverti, 2013). Precise figures for each respective immigrant group (e.g. asylum claimant, failed asylum claimant, irregular immigrant, criminals awaiting deportation to their country of origin, and international students who overstay their visa) are unavailable because they have been conflated and the government do not publish detailed statistics that categorize detainees. Yet, there are reports that actually some governments specifically target refugees.

Mountz et al. (2013) provide evidence that categorizes the detainees based on their status. The authors argue "the Australian regime has specially targeted asylum-seekers who arrive without a visa, who, according to current law [Australian Immigration law] face mandatory detention, upon arrival" (Mountz et al. 2013, p. 523). The authors provide evidence that as of July 2012 there were 6,809 people detained. Yet, the authors do not provide the data from previous years to establish percentage change over time. Has the number of detainee in Australia increased exponentially or marginally? More importantly, the authors do not further analyze the reasons why asylum claimants were detained. Finally, the authors do not distinguish between criminal and non-criminal asylum, which carries different stigma. Though these distinctions exist

in reality, the existing literature lump all detainees in one category and provide a general overview.

In terms of the treatment of refugee claimants in detention centres around the globe, there are many discrepancies in the limits on their freedoms. Some countries allow movement within certain parameters of the detention centre others simply imprison them. For instance in Europe refugees are detained upon arrival until their claim is determined (Leekers, 2010), but they are allowed to freely move within a certain distance of their camp if they do not pose a flight risk (Bosworth & Slade, 2014). In Canada, however, historically active refugees are rarely placed in detention centres (Pratt 2005), but, in recent years the government has used its powers to place more and more refugees in detention centres (Carasco, 2007). In Canada criminal and non-criminal foreigners supposed to be detained in different facilities. On the one hand non-criminal foreigners who are suspected of having violated immigration law are held in a "holding centre" where the authorities hope to remove these individuals as soon as possible before entry into Canada. On the other hand, the detention centre were for those who have violated the Criminal Code, and are at flight risk (Pratt, 2005, pp. 27–29). The two types of detention are:

(1) pre-admission detention at the border involving foreigners not admitted to the state's territory—in some countries, this includes asylum seekers—and

(2) pre-expulsion detention of foreigners whose stay in the territory is or has become unauthorized [after conviction of a crime] (Leerkes, 2010a, p. 830).

However, in recent years with the implementation of "inadmissibility" laws, Canada detain criminals and non-criminals in one cell for deportation (Waldman & Swaisland, 2012).

Scholars such as Aas and Bosworth (2013), Aliverti (2013) and Wilsher (2012) who analyze immigration detention centres in depth consider the elimination of a

person's liberty at the detention centres as an example of imprisonment, where states utilize criminal penalties to manage administrative rules that govern immigration system. Lucas (2005, p. 325), sees detention centres are no different from a "total institution, which deprive detainees of any contact with the outside world, far exceeding restrictions on ordinary criminal offenders in most US jails and prisons." It is argued that this is done to deter irregular migration (Aliverti, 2013). In Canada, no studies have been conducted to determine the exact motives of policies that criminalize (e.g. imprisonment) immigration offenses. Studies abroad illustrates that states employ policies that criminalize immigration offenses. In analyzing the changes in immigration policies in Britain, Aliverti (2013) argues that criminalisation is motivated by an instrumental logic which conceives of criminal law as an additional tool with which to enforce compliance with administrative norms. In this situation, insincerity and a lack of minimal care for the detainees is seen as an effective mechanism to make detainees leave the host country (Aliverti, 2013). While such practices in U.K. might be lawful under their immigration provisions, in Canada no work in this area has been undertaken to consider whether legislations enacted under *PCISA* that allow detention are objective and justifiable in a fair and democratic society.

A recent media report reveals the daunting findings of the Canadian Red Cross about immigration detention centres. The report suggests that the conditions in these centers are deteriorating rapidly (Bronskill, 2014). For instance a 2015 Globalnews investigative report reveals that "the 220-odd people in immigrant detention in Ontario jails lack even the most basic check on their wellbeing: The Canadian Red Cross has been prevented from ensuring their detentions is in line with international norms and

human rights" (Mehler Paperny, 2015). Canadian research on the effects of mandatory detention policies on detainees does not exist. Canadian researchers who critique such policies often use foreign data to support their claims. Wales and Rashid (2013) in their commentary opposing the implementation of mandatory detention in Canada use data from Australia and US. The authors conclude that "time spent in detention has been associated with posttraumatic stress disorder, depression, suicide, self-harm, and impaired child and infant development, among other detrimental consequences" (Wales & Rashid, 2013, p. 610). Since these findings are based on data from abroad, it is difficult to discern the exact effects of Canadian policies; nonetheless there are convincing studies from the US, Australia, and Europe that illustrate the dire implication of detention centres.

Hernandez (2013) provides evidence from the US suggesting that instead of helping vulnerable immigrants in detention centres, authorities place them in solitary confinement for months. It is at this point that the detainees start facing negligence from authorities in the centres. Apart from negligence pertaining to physical care, there have been incidents of physical assaults that have occurred in the centres (Hernandez, 2013). According to the reports, there have been more than 100 cases of physical abuse against detainees in the detention centres in parts of the US (Kalhan, 2010). Khosravi (2009) interviews former detainees and detention centre staff in Sweden, and examines how conduct inside the centre connects to conflicting discourses of 'caring for' or 'saving' refugees while also categorizing them as national security threats. The Swedish word for detention centre translates to 'warehouse', and workers describe their paradoxical role of providing hospitality – what Khosravi (2009) calls 'hostile hospitality' – for people who

are subjected to ‘violent forms of bodily removal’ (Khosravi, 2009, pp. 41–44). Yet, no scholar extensively describes how removal takes place, and whether the procedures followed are lawful?

A more recent report about Canadian detention centres indicates that Canadian authorities “discriminate against migrants with mental health issues both in terms of their liberty and security of person and their access to health care in detention” (Gros & Paloma, 2015, p. 6). The report found that no mental health support is provided to individuals detained in these centres despite the fact that individuals require mental health support (Gros & Paloma, 2015). It is quite unfortunate to reveal that detainees in the centres lead a deteriorated form of lifestyle (Khosravi, 2009; Bosworth & Slade, 2014), which should not be tolerated in a free and democratic society as Canada. Though no official data exist in Canada on the number of deaths in immigration detention centres, media reports suggest that since 2000 at least 12 people have lost their lives while in the custody of the Canadian government (endimmigrationdetention.com, 2015). Similarly, it has been recorded that between 2003 and 2008, a population of around 100 individuals have lost their lives in the detention centre of the US Immigration and Customs Enforcement due to medical negligence (Hernández, 2013). These data illustrate the dire circumstances of detainees in immigration detention centres. There is no thorough analysis of how these experiences impact the detainee’s integration trajectory after being released from detention. As data above showed few who are detained are actually deported, but most of the detainees are released into Canadian society. It is crucial that scholars conduct primary research on this group to illustrate the consequences of detention and explore whether detention is an appropriate mechanism to manage

immigration offense, and whether those who are released from detention have gone on to lead productive lives.

Gros and Paloma (2015) interviewed a few detainees to illustrate how the Canadian government mistreats them. Of particular interest in their study is the case of Masoud Hajivand, who is officially not diagnosed with mental illness but the symptoms and its timeline suggest that he has developed mental illness in the detention centre (Gros and Paloma, 2015). Hajivand, a publicly converted Christian who fled Iran is detained to be deported. However, it is impossible for the Canadian government to deport him, because his deportation will subject him to persecution in Iran based on Iran's blasphemy laws. Yet, Hajivand is deprived of his right to live freely in Canada. This situation cause Hajivand sleeping disorder, and stress, as he mention in the interview, he constantly has nightmares about being persecuted in Iran (Gros and Paloma, 2015). Simultaneously, Hajivand thinks about the fact that he will be separated from his family in Canada, whom he met after his arrival.

Hajivand's story illustrates how detention deteriorates the live of a mentally stable individual. Prior to entering the detention centre he had a happy life with family and friends, and a social support network that could help him alleviate the stress. Yet in detention there is no support for him to deal with his mental illness, neither are there people with whom he can share his concerns and worries. This results in sleeping problems and suicidal thoughts (Gros and Paloma, 2015). In the outside world he will be eligible for hospital stay and psychiatric counselling, however, because he is in the detention centre, his right to health care is simply denied (Gros and Paloma, 2015). The study by Gros and Paloma (2015) is one of the few Canadian studies that clearly illustrate

the need for mental support in detention centers, however studies that consider how such policy implementation should look like in Canada do not exist.

The issue of providing mental health support in the detention centres is complicated. In their study of British detention centres Aas & Bosworth (2013), reveal that some detainees find it difficult to take part in any of the activities in the centres, because they are uncertain about their future and do not have the patience to listen to someone instructing them. The authors suggest that this is the product of discourses embedded in the detention centres, which reinforce dangerousness, risk and security. As such detainees are labeled as strangers and unwelcome. This results in a situation where detainees are apathetic to partake in any activity because they are awaiting their ultimate punishment, which is removal (Aas & Bosworth, 2013, pp.162-183).

The Aas & Bosworth (2014) results are based on empirical evidence from UK. Their study is one of its kinds in the field of immigration detention centre, which incorporate first hand data and policy analysis to illustrate the dire consequences of immigration detention centres in UK. Aas & Bosworth (2013) study includes a historical analysis of immigration policies in UK and the evolution of immigration detention centre. To discern the effects of these policies on individual detainees the authors conducted a 250 detainee survey, " … over 500 unstructured detainee interviews (including life histories), 130 structured and unstructured detainee staff interviews, over 2400 hours of observation, and detailed field notes"(Aas & Bosworth, 2013, p.7). The author's main finding related to mental health of detainees is that individuals detained in these centres suffer from distress and isolation. These findings are convincing as the authors do not

simply describe the conditions but actually uses staff and detainee testimonies to revisit state approach toward detainee treatment.

In a recent Canadian study Gros & Paloma (2015) illustrate factors contributing to increased distress of foreign citizens confined in the detention centre. The authors suggest that although the immigration authorities want to remove some detainees, they cannot always deport them back to their home countries for safety reasons or because the country of origin refuses to cooperate. Yet, these individuals are not provided with minimal standards of care — access to health care— that all human being are entitled to in Canada. The question remains why is this not considered a problem in Canada. For instance this subject was not even raised during the debates in the preparation for the recent election on October 19, 2015.

No study in Canada has been conducted to establish why the public is apathetic about the rights of detainees who serve indeterminate time in these centres. Nonetheless, studies from other international jurisdictions, suggest that the reason these detainees do not receive dignified treatment is because the citizens of immigrant receiving countries tend to look down upon those who are detained (Bosworth and Slade 2014). Such beliefs are the result of a government-fabricated discourse that classifies detainees as "undeserving" immigrants. The premise about citizens' apathy with respect to the rights of detainees relies on Wacquant's (2001, pp. 119-120) triple exclusion hypotheses, in which he suggests that people who serve time in prisons do not have access "to valued social capital, [are] excluded from social distribution, and [are] banned from political participation." In this way, detainees are excluded from society, not allowed to

take part in any social interactions, are not permitted to access social capital[4], and are also not allowed to be a part of any political activities.

In the literature reviewed in this paper an attempt has been made to compare the detention centres and prisons to uncover whether there is any connection between them. Schuster (2011) states that those individuals who have experienced the living conditions in both immigration detention centres and prisons are able to project clear, visible and comparative pictures between the two institutions. The fact that they have lived and experienced each aspect of the two organizations, faced the behaviour and the interactions of the staff at both institutions, and have witnessed how these environments impact an individual's health enable them to provide valuable insight into how these institutions operate and what their effects are. In line with Schuster's (2011) views, Bosworth (2012) has added that there are many similarities between the detention centres and prisons. For instance, both institutions look alike, with the same "gloomy look." Both are places where individuals are deprived of their liberty and freedom of movement in order to face punishment, and for some this can be the final stage in their migration process (Bosworth, 2012, p. 128). When someone commits a crime they simultaneously fails their asylum claim, they are deemed a liar and deserve deportation - no matter the nature of their crime. However, the literature does not focus on whether deportation and imprisonment are justifiable after a person has finished their sentence.

In Canada, outside of three metropolitan areas detainees housed in prison because there are no detention centres and because detention centres are in the prison complex they have the same confinement boundaries as prisons. The prison service has the responsibility to run both the prison and the detention centres. In the three metropolitan areas of Toronto, Montreal, and

[4] Social capital is defined as "features of social organization, all of which facilitate coordination and cooperation for mutual benefit (Putnam, 1996, p. 67). In the case of detainees if they have no access to social capital, they cannot mobilize masses to come up for their cause.

Vancouver detainees are housed in detention centres in close proximity to prisons (Gros & Paloma, 2015). Aliverti (2013, p. 40) provides evidence for the enforcement of rules and discipline in detention centres. The author argues that the penalties for breaking detention rules resemble those of prisons, including solitary confinement for not following the guard's directions.

Whilst the similarities of prisons and detention centres are enormous, there are few dissimilarities that authors consider as main factors that distinguish prisons from detention centres. In Canada for instance Ting Chak (2014) suggests that there are no differences between prison and detention. In England Bosworth (2012) notices dissimilarities, such as prisoners having to experience physical torture or having to do strenuous work, while detainees are not expected to experience any form of physical assault. There are also no adjudication processes through which the detainees in the detention centres have to go to complete their term, or a process that evaluate the behaviour of individuals held in these institutions. The goal of prison is rehabilitation and the goal of detention is preparation to return to one's home country. It is noted, however, that in the detention centres more emphasis has been laid on incapacitation rather than concentrating on rehabilitative programs for those who have been suffering from mental illness. There is a debate about whether prison systems have a proper rehabilitation program, but for the purpose of this discussion it is important to note that detainees are treated as those who will not become members of the host society, whereas prisoners who are not convicted for life are seen as people who will one day return to the society. Khosravi argues that detainees and prisoners are held separately because of the belief that detainees should be excluded from social interaction with national citizens, as they will eventually be expelled back to their country (Khosravi, 2009), even though the circumstances under which they are held are the same. No research exists on

how many of these individuals are admitted back to Canada, and how detention affects their integration process. While each of the gaps mentioned here needs to be thoroughly explored to assess whether detaining people serves a greater cause, this research primarily is concerned with whether detaining asylum claimants is constitutional in the absence of identification requirements.

As is illustrated in the literature, it is important to explore the living conditions of the detainees in the immigration centres. First-hand accounts coupled with news reports and surveys suggests there are hardly any differences between the immigration detention centres and prisons. Equally important is considering the legality of such practices. In detention centres, people are not held for crimes, but their subordinate social status creates an emotional burden for them that contributes to a prison-like environment. Bosworth and Slade (2014) illustrate how social status is mediated through emotional responses and in doing so, misrecognition and status subordination are considered the primary factors that create sober and indeterminate detention times.

Does *PCISA* Violate Asylum Claimants Human Rights: A Canadian Policy Discussion

As illustrated above, irrespective of how one defines immigration detention centres the general consensus amongst immigration and legal scholars is that these institutions limit the liberty and freedom of movement of detainees. Tings Chak's (2014) work, which uses architectural drawings, meticulously illustrates how these centres limit one's freedom. For instance, the size and layout of detention centres in Canada are no different than prisons. Furthermore, detainees are monitored twenty-four hours daily by security guards and are expected to follow the rules set by the detention employees. Such practices deprive detainees' of their liberty and right to freedom of movement, which is a violation of their Charter rights.

Though some elements of detention has been found to violate s7 of the Charter (see for instance *Charkoui v. Canada* in which the judge found that the absolute secrecy of evidence unconstitutional) and Article 16 of the UNCRSR, surprisingly the same thorough analysis has not been conducted regarding identification requirements for asylum claimants. This is problematic insofar as the identification process transpires prior to detention and arguably is a preliminary and primary reason behind the subsequent Charter, UNCRSR and UDHR breach. In particular the procedural aspect of how identity is determined and who makes the decision has been neglected.

This MRP is concerned with whether Canadian policies that allow indeterminate detention of "suspected asylum claimants" in the absence of identification are in compliance with the Canadian Charter of Rights and Freedoms, UNCRSR, and UDHR. First, I establish what rights refugees have, and in what documents they are set. Second, I explore Canadian policies that provide the legal framework for who can detain an asylum claimant and on what grounds. Finally I examine whether the legislation that governs the detainment of asylum claimant is constitutional.

This discussion does not examine international legislation as distinct from the Canadian context. Rather it is assessed within Canadian jurisprudence where the courts have incorporated it as a general guideline in application of the Charter. Because these international laws are not binding on domestic courts and are merely persuasive, it is logical to examine its application in this respect because the court has wide discretionary and interpretive abilities – hence its application acquires significance through the courts application.

What Rights do Refugees Have? A Look At Refugee Human Rights

The purpose of this discussion is to evaluate Canadian detention policies through the lens of a human rights paradigm. There are diverse explanations and perspectives on how international and national human rights laws should be implemented when it comes to refugees and what constitute refugee rights. This is meticulously illustrated in the work of Andy Lamey (2013) who provides a very accessible and truly global tour of the legal status of refugees by examining the political and legal situation. At the heart of his work is the fundamental conflict between national sovereignty and human rights. Both claim to be universal, yet one inevitably cancels out the other, so that citizens lose their rights when they are displaced or forced to flee a state, and states lose their sovereignty if they are forced to view rights as universal and not just for their own citizens. Lamey's (2013) work exposes the dialects of adhering to human rights approach when it comes to refugees. For the purpose of this discussion my premise relies on the Canadian jurisprudence that evaluate the constitutionality of Canadian refugee legislation using UNCRSR and 1948 UDHR as an interpretive aid.

The Canadian courts historically have based their decision in accordance with UDHR declaration which holds that "everyone is entitled to both social and international order in which the rights and freedoms…can be fully realized" (Pogge, 2001, p. 22). This definition has two implications for asylum claimants. First, if asylum claimants are not able to realize their rights

such as freedom of assembly or freedom of movement, they should be allowed to escape such an environment and apply elsewhere for protection. The second implication is that if asylum claimants are in Canada, their rights must be protected. Still, there are limits to human rights. For instance, if one breaks the Criminal Code of Canada they can be detained lawfully. Furthermore, though the UN Convention provides clear guidelines on what the rights of refugees ought to be, the UN has very limited resources to enforce this convention. Other than shaming countries for failing to adhere to UNCRSR, and UDHR there are no recorded incidences where the UN has intervened to enforce refugee rights law in a signatory country.

While the UN cannot create laws which are binding in a sovereign country, the Canadian courts have incorporated the UNCRSR and UDHR as a framework to base their decisions and extend Charter rights to asylum claimants (*Singh v. Minister of Employment and Immigration*, 1985). According to Oliphant (2015) the Charter "represents a pretext for limitless judicial law making" (241). In other words, the Charter is a document that provides the general framework on how a law should be constructed. It gives the judges the tools to examine legislation enacted by elected politicians. Of particular importance to the discussion of identification requirements is s 7 of the Charter, which states that "Everyone has the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice."

In *Singh v. Minister of Employment and Immigration* (1985) par. (19) the SCC cited the UNCRSR, chapter. 1, art. 1, paragraph. A(2)[5] and UDHR (1948), article. 25(1)[6] to reinforce the

[5] (2) As a result of events occurring before 1 January 1951 and owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it.

notion of rights in a territory to foreign citizens. The judge extended rights protected under s.7 of the Charter to foreign citizens who find themselves in Canada and fear going back to their country because they face persecution. More recently, in 2015 the Ontario Court of Appeal held that those who are in detention have the right to *habeas corpus*, and denying detainees this right violates s.7, and s. 9 [7] of the Charter. *Habeas corpus* is a legal principle in the common law jurisdiction which extend control over the body of a prisoner [in the case of immigration detention centres detainee] to a court judge so it can discharge him or her to freedom if no proper legal cause can be shown for detention (Farbey, Sharpe, & Atrill, 2011).

Adhering to such a human rights approach creates fundamental rights to which detainees are intrinsically entitled, simply because they are a human being, regardless of nation, location, language, sex, religion, ethnic origin, or any other status (Alston & Robinson, New York University, 2005). These rights are only protected if the refugee does not break the Criminal Code of Canada. According to Robinson (2005) a human rights approach sets out the governments' responsibilities and provides grassroots organizations, citizens, and donors with the tools for holding governments accountable. When it comes to the treatment of refugees in the absence of identification, Canadian policy implementation does not take in to account rights guaranteed the under the UNCRSR rules, Charter, and UDHR. In particular current Canadian policies pertaining to asylum claimant identity determination do not respect the asylum

---

[6] (1) Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.

[7] supra note 1

claimant's freedom of movement rights that are guaranteed by international conventions and Charter.

Though every person in Canada is protected under s.7 of the Charter, nevertheless the SCC has decided that if a government wishes to limit one's freedom it can do so in accordance with the principles of fundamental justice. In a famous *B.C. Motor Vehicle Reference* which has become the popular reference point for the principles of fundamental justice. Lamer J. set an important precedent that the principles of fundamental justice are "to be found in the basic tenets of our legal system" (B.C. MOTOR VEHICLE ACT, 1985, p. 4). Lamer J. went on to suggest that many of these principles of fundamental justice "[can be] developed over time as presumptions at common law, [while] others [can find] expression in the international conventions on human rights". Lamer J. did not define what these principles of fundamental justice. Nevertheless the SCC has created tests that measure the constitutionality of a legislation called the Oakes test.

This test was created in the 1986 landmark case of *R v Oakes*. According to Evans (2013) courts can use this test to analyse whether a law violates rights found in the Charter and decide if the law may nonetheless stand. The test interprets section 1 of the Charter, which states that governments may limit rights if the limits "can be demonstrably justified in a free and democratic society" (Constitution Act, 1982). This is analysed through three tests. First, is the law important and necessary (e.g. pressing and substantive)? Second, does the law punish the crime committed (e.g. rationally connected)? Third, can it meet its objective with minimal impairment (proportionate effect)? If a law limiting Charter rights fails the test, it can be either struck down or changed. In *R v. Oakes* the court struck down the "reverse onus" (when an accused is first assumed guilty and must then prove his or her own innocence) was not rationally

connected to the goal of the law *R v Oakes*, [1986] 1 SCR 103, 1986 CanLii 46 (1986) [Oakes]. Yet in the identification requirements for refugees reintroduces the reverse onus clause, because it holds asylum claimants in detention until they prove their identity. In this situation the government deprive asylum claimant of their freedom based on a *de facto* assumption of guilt in the absence of identification. This has a part of the then Conservative government's so called "tough on crime" agenda, where it sought to pander to its inherently conservative political base.

Detainment in Canada: Can it be Justified?

A refugee is defined by article 1 of the UNCRSR as a person who:

> "owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it" (MacIntosh, 2012, p. 184).

The same convention requires signatory countries to ensure that a qualified immigration officials determine whether an asylum claimant's case, based on the aforementioned criteria is valid (MacIntosh, 2012, p. 184). In Canada the rules for eligibility to claim refugee are established under the *IRPA*. The *Act* is a "framework legislation that sets out in general terms the rules governing the admission, terms of residence, removal and status of non-citizens" (Carasco, 2007, p. 24). This *Act* sets out the rules CBSA officers to require proper identification from a foreign citizen before admitting them to Canada.

This identity requirement plays a major barrier for an asylum claimant, as the requirement renders them ineligible for hearing by Immigration and Refugee Board (De Genova & Peutz, 2010). Section 11 of the *IRPA* sets out the rules for identity requirements and inadvertently the rules for who can apply refugee in Canada. According to the *Act:*

> (1) A foreign national must, before entering Canada, apply to an officer for a visa or for any other document required by the regulations. The visa or document may be issued if, following an examination, the officer is satisfied that the foreign national is not inadmissible and meets the requirements of this *Act*.
>
> (1.01) Despite subsection (1), a foreign national must, before entering Canada, apply for an electronic travel authorization required by the regulations by means of an electronic system, unless the regulations provide that the application may be made by other means. The application may be examined by the system or by an officer and, if the system or officer determines that the foreign national is not inadmissible and meets the requirements of this Act, the authorization may be issued by the system or officer (Immigration Refugee Protection Act, 2001).

If a refugee claimant is unable to provide identity documents, section 106 of the *Act* sets the rules for identity determination as follow:

> The Refugee Protection Division must take into account, with respect to the credibility of a claimant, whether the claimant possesses acceptable documentation establishing identity, and if not, whether they have provided a reasonable explanation for the lack of documentation or have taken reasonable steps to obtain the documentation (Immigration and Refugee Protection Act, 2001).

On the surface these requirements are reasonable and allow the immigration officials to consider evidence other than official identity nevertheless the Canadian government in recent years implemented policies under *PCISA*[8] that allow CBSA officers to pre-determine whether one is admissible (Waldman & Swaisland, 2012). As a result, in contrast to the Charter requirement the CBSA officers detain individuals who cannot be identified. Such practices automatically presumes asylum claimant guilty in the absence of a punishable crime. As such a CBSA violates s. 7 of the Charter when detaining asylum claimants who are unable to provide identity, the rules for refugee claims are set out in a separate document and not in the Canadian Criminal Code.

[8] Although I cite here *PCISA* as the official act, the webpage still refer to the old *Act* which was *IRPA*. The Conservative government in 2012 amended IRPA clauses, and suggested the *Act* can be "cited as the Protecting Canada's Immigration System Act"(Branch, 2014).

Furthermore, CBSA officers violate UNCRSR article 16, [9] because CBSA officers act as immigration officers, and judges in claim determination. This practice denies asylum claimant their rights to access to court.

It is important to note that the *Immigration Refugee Protection Act* (*IRPA*) was updated in the wake of the MV Sun Sea arrival, a ship that brought on board 492 people from Sri Lanka to Canada. One can assume that the timing of the enactment of these legislations was to deliberately obscure the concern about the violation of the asylum claimant's Charter rights as the government presumed that foreigners are not protected under Charter unless admitted into Canada as landed immigrants or bona fide refugees. According Daniel Manson (2013), "the Conservative-led government proposed the *Preventing Human Smugglers from Abusing Canada's Immigration System Act*, which, among other provisions established that any arrivals deemed "irregular" are subject to immediate detention without judicial review" (p.35). The conservative government defended the *Act* in terms of Canadian sovereignty, and its ability to protect its border and politically it defended the *Act* as an integral part of its tough on crime agenda. As Prime Minister Harper stated in the media in response to the arrival of 492 Tamil refugees on the coast of Vancouver: "it is a fundamental exercise of sovereignty. We are responsible for the security of our borders and the ability to welcome people or not welcome people when they come" (Manson, 2013, p. 1). Yet the mere fact that CBSA officer determines whether one has the right to claim refugee status, is a clear violation of the refugee's Charter

[9] Article 16 of UNCRSR is concerned with "access to courts: 1. A refugee shall have free access to the courts of law on the territory of all Contracting States.
2. A refugee shall enjoy in the Contracting State in which he has his habitual residence the same treatment as a national in matters pertaining to access to the courts, including legal assistance and exemption from cautio judicatum solvi.
3. A refugee shall be accorded in the matters referred to in paragraph 2 in countries other than that in which he has his habitual residence the treatment granted to a national of the country of his habitual residence (United Nations Human Rights Office of The High Commissioner, 1951).

rights. In this regard the government hands to the (CBSA) officers the "enforcement" side of immigration without first determining if such an act is in line with the international convention that requires a refugee claim to be adjudicated by an impartial body.

The CBSA officers can assign a "removal" order in which officers are guided to detain a foreign citizen who is subject to deportation after a decision is made or even prior to meeting CIC officers. This act violates the minimal impairment principle of the *Oakes Test.* According to the official policy posted on the CIC website, the CBSA officers can detain an individual:

> if they have reasonable grounds to believe that the person is inadmissible for any of the following reasons;
> - the person is unlikely to appear for an immigration proceeding such as an examination or an admissibility hearing, or for removal from Canada;
> - the person is a danger to the public; or
> - the person is unable to satisfy the officer of their identity; or
> - the person is designated as part of an irregular arrival by the Minister of Public Safety (Government of Canada, 2014)

CBSA officers at a port of entry can [also] detain someone for reasons other than those listed above. Officers can detain a permanent resident or a foreign national at a port of entry for the following reasons:

- It is necessary for the completion of an examination
- There is reasonable grounds to suspect that the person [foreign citizen] is inadmissible on grounds of security, violating human or international rights, serious criminality, criminality, or organized criminality (Government of Canada, 2014).

It is important to note that the above requirements are vague and subject to different interpretations. For example, it is not clarified in the policy what entails "serious criminality" and what entails criminality. In theory a terrorist and a shoplifter can be held to the same standard. This provision of the *PCISA* fails to meet the proportionality test of the *Oakes Test.* In this regard, Canada creates restrictive border control rules that allow detention and removal by the CBSA. The implicit requirement of *PCISA* is that CBSA, a government agency responsible for

the security of borders, is given the authority to detain someone until identity is proven. Yet, the time frame within which such process must be completed is left out of the legislation.

Moreover, if the Minister of Public Safety believes an individual who arrives or resides in Canada poses a risk to Canadian public safety and security, the minister can detain the foreign citizen without due process. S. 81 of *IRPA* allows *"*The Minister of public safety and the Minister of Citizenship and Immigration may issue a warrant for the arrest and detention of a person who is named in a certificate if they have reasonable grounds to believe that the person is a danger to national security or to the safety of any person or is unlikely to appear at a proceeding or for removal" *Immigration and Refugee Protection Act*. This group of individuals has no right to review the evidence presented against them (S. Silverman, 2014). In this regard Canada detains failed asylum claimants who are deemed a flight risk or if CBSA officers suspect that the foreign national will not appear for an immigration hearing. Sections 54 to 61, and subsequently amended by the conservative government with Bill C-31 include more restrictive clauses under *PCISA* (2012), which allows the CBSA officer to determine at the port of entry whether someone is ineligible to claim refugee status, or whether someone poses a threat to Canadian public safety and security, if the answer is yes the officer may detain the foreign citizen. Detaining individuals aim to establish physical custody of foreign-citizens (Gros & Paloma, 2015), which deprives them of their liberty to move freely.

Concerning is the fact that if the foreign citizen cannot be removed from Canada, s/he is detained until a solution is found. Thus, the individual has no other option, but to live in confinement of the immigration detention centres until they are permitted to live legally in society (Schuster & Majidi, 2013). This creates a situation in which some asylum claimants are implicitly tagged as detainees and they must continue to live in immigration detention centres for

an indeterminate time until their country of origin accepts them as citizens or Canada grants them entry.

Consider for example the case Victor Vinnetou or as the media articles refer to him "mystery man", who has spend 11 years in detention centre awaiting his identity confirmation (Arsenault, 2014). As long the identity is not confirmed and the country of origin is not determined Vinnetou is held in custody on an immigration offense. According to the media reports, Vinnetou has not violated the Criminal Code of Canada, but is imprisoned for 11 years, because he failed to provide the authorities proper identification. Such practices trap refugees in a dilemma where neither the approached nation has granted them residency or citizenship, and nor will their home country accept them back.

Another perturbing fact about detaining foreign citizens upon arrival is that individuals who are deemed a security risk to Canada are issued a "security certificate." In this situation the government deprives individuals of their Charter rights without even giving them the right to defend themselves. Such individuals can be detained for an indeterminate time because they are deemed inadmissible to Canada. The government clearly states that the security certificates are assigned based on "intelligence information" and not a criminal conviction nor a thorough process in which the detainees can defend themselves. The CIC website states:

> The security certificate process within the *Immigration and Refugee Protection Act* is not a criminal proceeding, but an immigration proceeding. The objective of the process is the removal from Canada of non-Canadians who have no legal right to be here and who pose a serious threat to Canada and Canadians. The Minister of Public Safety and the Minister of Citizenship and Immigration review and sign security certificates. Once signed, security certificates are referred to the Federal Court. *The Immigration and Refugee Protection Act* allows the federal government to use, and a judge to consider, classified information in closed proceedings. The information in

> these proceedings must be kept confidential because disclosing it would seriously harm the government's ability to protect Canadians (Public Safety, 2015).

The language is framed in a way that makes those who are assigned a security certificate a criminal in the absence of a crime. These individuals are denied the right to defend themselves against the charges. The public safety minister, who is a political figure, decides who is a threat. This process is not transparent since the government does not provide any information on the case to the individuals who are deemed to be a "security threat." Those who are not assigned a security certificate are held in detention until their identity is proven and a decision is made on whether to allow them to stay in Canada. In the interim detainees are ineligible to be released.

A detainee can only be release if the refugee board officials review their case and deems the case legitimate. The review takes place as follow:

> Within forty-eight (48) hours (or as soon as possible after that) - The Immigration Division of the Immigration and Refugee Board (IRB) will review [why an individual is in] detention. The decision-maker (the "Member") from the Immigration Division is independent from the CBSA.
> Seven (7) days - If [a foreign citizen] continue to be detained, [his/her] case will be reviewed again within the next seven days by the IRB.
> Every thirty (30) days - After the seven-day review, [a] case must be reviewed again at least once every 30 days by the IRB.
> [The detainee's] presence is required at each review.
> It is recommended that [the detainee] make the necessary arrangements for [his/her] counsel or designated representative … At any time before next scheduled review date [a detainee] may ask for an earlier review, if new facts justify such a request. The request must be made in writing and presented to the Immigration Division of the IRB, who will decide whether or not to grant your request. (Canada Boarder Agency, 2014)

These requirements restrict asylum claimants' freedoms. The government tries to justify it under the umbrella of "national security", suggesting that if these detainees are released they pose a danger to society. The only way detainees are released is upon the payment of

a deposit to the government or a guarantor that assures the detainee will appear for the hearings (Carasco, 2007; Canada Boarder Agency, 2014). These requirements implicitly deny refugees the right to be free. Since, they are not allowed to leave the detention centre and majority of them do not have family in Canada to be their guarantor. How can a newly arrived individual who has lost their family and friends in war provide a deposit or guarantor? Scholars have pointed out that such practices are meant to make it difficult for a refugee claim to succeed, to deter refugee claimants from claiming refugee status in Canada. In this regard immigration detention centres have become most governments' mechanism to deter refugees and illegal migration (Pratt 2005; Aliverti; Khosravi 2009; Wilsher, 2012). This is evident in *PCISA*, which set strict rules for appeal that makes it very difficult for a claimant to appeal a decision.

If a refugee claim fails, the claimant may be able to ask the Refugee Appeal Division (RAD) to review the decision because the Immigration and Refugee Board made an error or there is new evidence to prove the case (Waldman & Swaisland, 2013). According to Waldman & Swaisland (2013) appeal must be filed within 15 calendar days and all final documents submitted (known as perfecting an appeal) within 30 calendar days from the date the written reasons for the negative refugee decision are received. While awaiting the appeal the claimant must present himself or herself either weekly or bi-weekly to the CBSA to prove that they are in Canada and willing to appear for a hearing. If the refugee fails to appear for any reason a warrant will be issued to detain them. The legislation sets very short timelines with which an appellant must comply (Waldman & Swaisland, 2013). These timelines makes it very difficult for a refugee to prepare the needed documents. Imagine for instance, a refugee who comes from a small village in Afghanistan, which is inaccessible and cannot be reached by phone, or Internet -

how would a refugee from such region provide documents within 30 days to prove their case in such a short time?

The final hurdle in fighting detention is that the Conservative government puts the onus on an asylum claimant to arrange his or her own counsel. This particularly hurts refugees who flee war zones, and denies them access to court. More importantly if a detainee is in detention how can they arrange counsel, especially given that they are not allowed to leave the boundaries of the detention centres. The negative effects of these policies are well documented in numerous legal, political and sociological studies (see for example Carasco, 2007; Mountz, Coddington, Catania, and Loyd 2013; Khosravi 2009; Aliverti, 2013).

Canada unconstitutionally, deprives some foreign-citizens of their liberty and diminishes their freedom of movement without due process (Nakache, 2011). These include, asylum claimants from DCO, and foreign nationals whose identity or reason for travel to Canada cannot be determined upon arrival (Silverman, 2014). Canada also holds in immigration detention centres, foreign criminals who have completed their sentence but are unable to return to their country of origin, failed asylum claimants, temporary immigrants who have overstayed their visas, and foreign citizens who have failed to acquire Canadian immigration documents through official avenues (Gros & Paloma, 2015; S. Silverman, 2014). Above all at the discretion of the Minister of Public Safety, the Canadian government detains any non-citizen who is deemed a risk to Canadian public security without due process, which I argue, makes these acts unconstitutional.

PCISA provisions are extremely broad and lead to less fairness in the refugee and immigration system, and cannot be justified in a free and democratic society. As a leading

refugee lawyer Andrew Brouwer on October 29, 2012 before the committee on *IRPA* stated:

> The inadmissibility provisions that are already in *IRPA* are extremely broad and catch people who have committed no crime and represent no danger to safety or security. Among those who are affected already are people who are inadmissible simply because they worked against a repressive regime or an undemocratic government in their own country (Brouwer, 2012).

What Brouwer suggests is that people who fight against oppressive and undemocratic governments could be barred from Canada according to *IRPA* rules. These rules are in stark contrast to the UNCRSR article 1 (one) which ensures safety and security of those who flee persecution.

Particularly worrying is the fact that Canada holds detainees in provincial jails with other criminals who are convicted (Carasco, 2007). The government of Canada claims that detainees in detention centres have access to medical assistance, food, modern communication devices such as phone and email, and are allowed to have visitors (CBC, 2012). Nevertheless, research in Canada and abroad suggest that the effects of immigration detention centres are daunting, and no different than real prison where criminals are held.

The government argues that national security and public safety are the only reasons for detaining a foreign-citizen. If this were the true reasons behind detaining foreign citizens, they could be justified in a free and democratic society because public safety is the primary responsibility of national governments (Goldman, 2002). However, studies suggest that often innocent people are detained to deter refugees from entering Canada (Carasco, 2007). In this regard protection of the nation is not the objective rather achieving a political agenda in which asylum claimant's human rights are violated is the main objective. A case in point is the Conservative government's "anti-smuggling" Bill-C31 enacted as *PCISA* (2012) after the arrival

of Sun Sea, which brought several hundred Sri Lankan to the shores of Vancouver (Naumetz, 2011). The arrival of the Sri Lankans gave the then conservative government the leverage to enact the most inhumane *Act*, *PCISA,* which can deny a refugee claim adjudication and right to council. This *Act* imposes mandatory detention without access to independent review, when asylum claimants arrive in groups, *PCISA* (2012) also legislated that foreign citizens who arrive in groups of two or more are automatically a threat to Canada's national security if these individuals cannot provide identification to the border services agents immediately upon arrival. Ultimately in 2015 the *SCC* strikes down the *Act* as unconstitutional. According to a CBC (2015) report "[j]udge Richard Mosley said Canada's commitment to cracking down on people smuggling "may be blurred by an overly expansive interpretation" of the law to encompass "those who did not plan or agree to carry out the scheme and have no prospect of a reward other than a modest improvement in their living conditions en route" (Proctor, 2015).

There is no doubt that the enactment of the policies that subject individuals to detention violate articles 1, and 16 of UNCRSR, article 3 of UDHR and ss. 7 and 9 of the Charter. These provisions ensure an asylum claimant's freedom and liberty and access to courts in the country where they intend to claim refugee. By *prima facie* determining who can apply for an appeal, the government deny *habeas corpus* of the refugee claimant. For Carasco, (2007), the mere fact that CBSA officers, who are not qualified immigration agents can decide the eligibility criteria for refugee claim, deviates from our obligation in ensuring refugee cases are adjudicated in a fair and just manner. The identification rules simply deny individuals fleeing persecution the right to a fair and just claim adjudication and are unconstitutional, which cannot be justified in a free and democratic society. However, the dilemma remains how can government ensure refugee human rights and protect Canada's national security?

How Can Canada Ensure Refugee Rights? A policy recommendation

There is a cynical conviction among right wing politicians that Canada's security and border control cannot prevail without violating human rights of refugee claimants. These politicians even believe in the old floodgates argument, which suggests that treating asylum claimants decently is wrong because it may encourage others to come. In this view national security can be assured when detention deters irregular migration (Leerkes, 2010). But CIC has no statistical or anecdotal evidence that detaining people without documents affects arrivals or acts as a push-factor.

The argument in favour of detention is always: there is no alternative. In my view, policy makers can at least try to implement policies that do not grossly violate the human rights of refugee claimants. Only in extreme cases that truly endanger the public should a claimant be detained, and not everyone who is "suspected" and not every asylum claimants who has no identity documents should be detained. As the old proverb says, "when there is a will, there is a way". First and foremost the government must educate the public through public discussions about the importance of refugee system. A refugee system is about human rights, it's about protecting people from persecution, and offering refuge to people fleeing war-torn countries where human rights violations are prevalent. Punishing people for not having ID in this context is senseless and it is not about protecting the "integrity" of the immigration system to prevent people from coming here and making refugee claims (Canadian Council for Refugees, 1997). Such practices cannot ensure the safety and security of the Canadian public. Furthermore detaining a claimant in Canada for identity determination ignores the fact that Canadian Visa offices are concentrated in Western Europe and the U.S. far from countries that produce refugees with the reality that refugees often must flee very quickly.

To prevent detainment the government must ensure that refugees do not have to make the long trip to Canada to apply for refugee. For instance, the government can assign immigration professionals at the embassies who are capable of assessing refugee claims. More importantly the government must should have representatives in close proximities to war torn countries. Currently, there are not many Canadian embassies or consulates in countries that produce most of the world's refugees. While there can be times when simply establishing an embassy in a refugee producing country is not possible for the safety and security of embassy personnel. In such cases, the government should at least make sure that there are enough qualified staff available in the surrounding countries – where they can process cases. According to the United Nations High Commissioner for Refugees Global Trends 2014 the Syrian Arab Republic (3.88 million), Afghanistan (2.59 million), and Somalia (1.11 million) are the three mains source of refugee that have produced 53% of global refugees. Yet the government of Canada has no representative in any of these countries. It will be helpful to install one regional office in each area for processing asylum claims to Canada.

While it is challenging to open an embassy or consulate in these countries for safety reasons, what the Canadian government can do is to train CBSA officers and immigration officers on how to determine the identities of these individuals without infringing on their rights. For instance, one way to determine identity might be cross-examining the asylum claimant on their place of birth and asking them strategic question to determine the accurateness of information they provide. According to the Canadian Council for Refugees, currently, in Canada the challenge is that CIC does not trust the quality of decision-making at the Immigration and Refugee Board (Canadian Council for Refugees, 2015). The regulatory impact statement itself goes so far as to say that not all of those accepted by the IRB are in fact genuine refugees. The

Council suggest that most accepted refugee claimants have some identity documents, but the documents have been deemed "unsatisfactory". The decision-making is very inconsistent between offices and between countries of origin. Asylum claims are refused when there is "absolutely no question about their identity -- it [is] their documents, which [are deemed] unsatisfactory. For example, a former member of the Somali Olympic team had ID, magazine photos, etc. and was still turned down, as he had no passport. The standard for what is satisfactory should be clear and should be reasonable" (Canadian Council for Refugees, 1997). Requiring passports is unreasonable, and subjects asylum claimants to arbitrary detention that cannot be justified in a free and democratic society. In order to do so the government must create an environment, which makes it easy for refugee claimants to claim refugee status in Canada.

Second, the government must implement the coroner's recommendation that was put in place after the death of Lucia Vega Jiminez. Ms. Jiminez hanged herself in a shower stall at Vancouver airport holding centre (Carman and Robinson, 2014). The jurors after her death recommended that there be a dedicated CBSA centre for detainees that is staffed by its own employees, with its own on-site courtroom for immigration hearings. Jurors also recommended that "at a minimum," lawyers must have access to the detention centre. It must be fitted with call buttons for help, self-harm proofed, and equipped with telephones. The CBSA should access the video monitoring system at random times to ensure the appropriate number of staff are on site and that they are meeting their contractual requirements. Jurors also recommended the federal government appoint an independent ombudsperson to mediate related concerns or complaints, and create a civilian organization to "investigate critical incidents in CBSA custody." Translators must also be available for detainees who can't understand English, the jury recommended. According to Vancouver Sun report 2014 "jurors said detainees should have access to medical

services, non-governmental organizations and they should be allowed spiritual and family visits. They also must be given mental and physical health assessments, and anyone who has contact with detainees must be trained in suicide prevention and be given courses on handling detainees in a respectful manner" (Carman et al., 2014). Though these recommendations do not ensure detainee's liberty and freedom of movement, at least they make sure that proper procedures are in place to prevent loss of life in these centres.

Finally, if the Canadian government is serious about refugee human rights protection, it must implement a human rights organization that specifically deals with asylum claimants. This arms length body should also have the authority to evaluate border policies and hear complaints about CBSA officers' conduct. It must oversee whether CBSA officers' conducts are in compliance with the international human rights convention and Canadian Charter. Currently there are no civilian bodies that monitor CBSA officer's conduct to be evaluated on its effects. Nevertheless many police departments around the globe have a civilian body that ensures police conducts are in compliance with human rights codes and municipal mandates. A case in point is the Toronto Police Services Board (TPSB), a civilian board with 7 members that oversees the Toronto Police Services daily operations (www.tpsb.ca). The sole purpose of TPSB is to maintain trust through communicative action. TPSB provide opportunity for debate and dialogue between Police Services and the public, for a shared objective "safety in communities across the city." The government of Canada can adopt a similar model to monitor and improve the conduct of CBSA officers.

Conclusion

In conclusion, detention must be used as a last resort and only when necessary and essential to protecting the safety and security of the public. If this objective is not being met, then detention should not be adopted to control irregular migration. To ensure such practices do not take place, an independent civilian organization specifically assigned to protecting the fundamental human rights of all asylum claimants must be created to monitor the actions of CBSA authorities. Such an arms length organization is necessary as it could also have oversight of Canada's detention centres. The latter is vital as immigration detention centres diminish asylum claimants' freedom of movement and violates their Charter and fundamental human rights. Despite the fact that immigration detention violates an asylum claimants' rights, it is argued that more and more these centres are used to manage irregular migrants, thereby engaging in crimmigration, a situation in which immigration processes resemble of criminal precedings. There is no doubt that detention centres are prison alike institutions in which detainees feel themselves as serving time for crime as oppose to being held for administrative purposes as the government claims.

The purpose of this research was twofold. First, it establishes the gap in literature pertaining to identification requirements for asylum claimants, through a thorough literature review of the immigration detention centres. In doing so, the study explains through a historical perspective how the nature of immigration detention centres evolved in countries with common law jurisdiction. Similarities between immigration detention centres are prisons are highlighted to illustrate how these centres diminish detainees' freedom of movement. For instance detainees are deprived of the right to leave the centre unless the responsible authorities grant them bail.

Second, the study specifically examines Canadian policies pertaining to identification requirements for asylum claimant prior to their claim determination. The results of these findings

are discouraging and do not affirm Canada's commitment to the Charter and protecting the human rights of refugees. Canada still has policies that allow for the indeterminate detainment of asylum claimants when their identity cannot be determined. These policies I have argued, clearly violate asylum claimants' fundamental human rights and their rights embedded in the Canadian Charter of Rights and Freedoms. In particular, with the introduction of strict identification requirements for eligibility to enter Canada, the government re-enacted the *reverse onus* clause. As such if a claimant cannot provide proper identification to CBSA officer, these officer are allowed to detain them until identity is established. This leads to a situation in which asylum claimants are presumed guilty until they can prove their innocence. Such practices by the government were declared unconstitutional three decades ago, but when it comes to the treatment of asylum claimants the practice of reverse onus still persists. While more research is required to understand in greater details the dire consequences of immigration detention centres, and how it affects the future integration of those held in the centres, what is clear is that current policies and practices violate asylum claimants' Charter and human rights. In order to showcase Canada's commitment to protecting human rights, and ensuring Charter rights for asylum claimants an independent human rights body is needed to address the unfair treatment individuals detained in immigration detention centres.

Appendix A

(Immigration* detention centre in Canada*) And Australia* And England OR U.K.*

(Immigration holding centre in Canada) And Australia* And England OR U.K.*

(Pre-expulsion immigration detention*) Canada* And Australia* And England OR U.K.*

(pre-admission immigration detention*) Canada* And Australia* And England OR U.K.*

(immigration holding centre*) Canada* And Australia* And England OR U.K*

(law* immigration* detention* centre* in Canada) And Australia* And England OR U.K*

(policies* immigration* detention* centre* in Canada) And Australia* And England OR U.K.*

(Human Rights* immigration* detention* centre* in Canada) And Australia* And England OR U.K.*

(Refugee detention in Canada*) And Australia* And England OR U.K.*
(Asylum seeker detention in Canada*) And Australia* And England OR U.K.*

(Asylum claimant detention in Canada*) And Australia* And England OR U.K.*

(Identity requirements Asylum claimants Canada*) And Australia* And England OR U.K

Appendix B

These data bases and their descriptions are completely retrieved from:

https://library.cf.ryerson.ca/guides/view/?guide=507#tabs-507-101

Academic Search Premier, provides full text for over 2,000 academic, social sciences, humanities, general science, education and multi-cultural journals.

Canadian Research Index, a reference source that indexes Canadian government and research publications.

JSTOR, full text digital archive of core scholarly journals with complete back runs of many titles.

Sociological Abstracts, provides abstracts of journal articles and citations to book reviews drawn from over 1,800+ serials publications, and also provides abstracts of books, book chapters, dissertations, and conference papers.

Worldwide Political Science Abstracts, provides abstracts and indexing of the international literature of political science and international relations, along with complementary fields, including international law and public administration/policy.

For the purpose of this research, the CIC webpages pertaining to immigration detention centres are also analyzed to extract policies pertaining to identification requirements.

Appendix C

1. Does the article discuss immigration detention centre in Canada, Australia and United Kingdom?

a. yes b. no

2. What are the key terms in the article/book?

a. Immigration detention center

b. Refugee law

c. Asylum claimant

d. United Nations Convention Relating to the Status of Refugees

e. Human rights

f. Canadian Charter of Rights and Freedoms

g. Refugee claim determination

3. Has the article/book evaluated Canada's identification requirements for eligibility to claim refugee?

a. yes b. no

References

Aas, K. F., & Bosworth, M. (Eds.). (2013). *The borders of punishment: migration, citizenship, and social exclusion* (First edition). Oxford: Oxford University Press.

Aliverti, A. J. (2013). *Crimes of mobility : criminal law and the regulation of immigration*. Milton Park, Abingdon, Oxon: Routledge.

Alston, P., & Robinson, M., New York University (Eds.). (2005). *Human rights and development: towards mutual reinforcement*. Oxford ; New York: Oxford University Press.

Arsenault, A. (2014). Mystery man's identity still murky after decade in Canadian detention. Retrieved November 10, 2015, from http://www.cbc.ca/news/world/mystery-man-s-identity-still-murky-after-decade-in-canadian-detention-1.3100781

Barker, V. (2012). Global Mobility and Penal Order: Criminalizing Migration, A View from Europe. *Sociology Compass, 6*(2), 113–121.

B.C. MOTOR VEHICLE ACT. (1985). LEADING CONSTITUTIONAL DECISIONS OF THE SUPREME COURT OF CANADA. (P. RUSSELL H., R. KNOPFF, & F. L. Morton, Eds.). THE RESEARCH UNIT FOR SOCIO-LEGAL STUDIES. FACULTY OF SOCIAL SCIENCES UNIVERSITY OF CALGARY CALGARY, ALBERT A T2N IN4. Retrieved from http://people.stfx.ca/pclancy/MVA.pdf

Bosworth, M. (2012). Subjectivity and identity in detention: Punishment and society in a global age. *Theoretical Criminology, 16*(2), 123–140.

Bosworth, M., & Slade, G. (2014). In search of recognition: Gender and staff–detainee relations in a British immigration removal centre. *Punishment & Society, 16*(2), 169–186.

Branch, L. S. (2014, January 30). Consolidated federal laws of canada, Protecting Canada's Immigration System Act. Retrieved November 10, 2015, from http://laws-lois.justice.gc.ca/eng/annualstatutes/2012_17/page-1.html

Bronskill, J. (2014, September 25). Red Cross uncovers numerous problems facing immigration detainees. Retrieved from http://www.macleans.ca/news/canada/red-cross-uncovers-numerous-problems-facing-immigration-detainees/

Brouwer, A. (2012). *Citizenship and Immigration Committee* (No. 55). Retrieved from https://openparliament.ca/committees/immigration/41-1/55/

Canada Boarder Agency. (2014). Information for people detained under the Immigration and Refugee Protection Act. Retrieved from http://www.cbsa-asfc.gc.ca/publications/pub/bsf5012-eng.pdf

Canadian Council for Refugees. (1997). Identity Documents: Arguments and Counter-arguments. Retrieved from http://ccrweb.ca/en/identity-documents-arguments-and-counter-arguments

Canadian Council for Refugees. (2015). Identity Documents: Arguments and Counter-arguments. Retrieved from http://ccrweb.ca/en/identity-documents-arguments-and-counter-arguments

Canuck Politics - Original Channel (2007-2008). (n.d.). *Why did Liberals oppose the Anti-terrorism Act?*. Retrieved from https://www.youtube.com/watch?v=jh4IEpu7syY

Carasco, E. F. (Ed.). (2007). *Immigration and refugee law: cases, materials and commentary*. Toronto: Emond Montgomery Publications.

Carman, T., Robinson, M., & 8, V. S. O., 2014. (n.d.). CBSA should staff its own detention centre: B.C. coroner's inquest (updated with video). Retrieved November 20, 2015, from http://www.vancouversun.com/news/CBSA+should+staff+detention+centre+coroner+inquest+updated+with+video/10271559/story.html

CBC. (2012, December 14). Detention centres no place for migrant children, critics argue. Retrieved April 11, 2015, from http://www.cbc.ca/1.1169993

CBC. (2014). CBSA immigration arrests during spot checks stir controversy. Retrieved December 17, 2015, from http://www.cbc.ca/news/canada/toronto/cbsa-immigration-arrests-during-spot-checks-stir-controversy-1.2738337

Cej, R. (2012, February 12). Reintroduced immigration bill punishes refugee claimants. *The Toronto Star*. Retrieved from http://www.thestar.com/opinion/editorialopinion/2012/02/12/bill_c4_tips_the_balance_against_refugees.html

Chairperson's Guidline 2, I. and R. B. of. (2010, October 1). Chairperson Guideline 2: Detention. Retrieved December 17, 2015, from http://www.irb-cisr.gc.ca/Eng/BoaCom/references/pol/GuiDir/Pages/GuideDir02.aspx

Chak, T. (2014). *Undocumented: the architecture of migrant detention*. Montreal ; Amsterdam: Architecture Observer.

Charkaoui v. Canada. Charkaui v. Canada (Citizenship and Immigration), No. 31597 (Supreme Court of Canada 2008). Retrieved from http://www.lexisnexis.ca/documents/2008scc38.pdf

Cohen, S. (2002). *Folk devils and moral panics: the creation of the mods and rockers* (3rd ed). New York: Routledge.

Constitution Act 1982, L. S. (2012, January 1). Constitution Acts, 1867 to 1982. Retrieved November 22, 2015, from http://laws-lois.justice.gc.ca/eng/const/page-15.html

Creswell, J. W. (2013). *Qualitative inquiry & research design: choosing among five approaches* (Third edition). Los Angeles: SAGE Publications.

De Genova, N., & Peutz, N. M. (Eds.). (2010). *The deportation regime: sovereignty, space, and the freedom of movement*. Durham [N.C.]: Duke University Press.

Department of Justice. (2001, October 15). About the Anti-terrorism Act. Retrieved December 17, 2015, from http://www.justice.gc.ca/eng/cj-jp/ns-sn/act-loi.html

Drolet, J., Sampson, T., Burstein, M., Smith, B., Gredling, A., & Pasca, R. (2014). The Role of Employers in Bridging Newcomers' Absorption and Integration in the Canadian Labour Market. Pathways to Prosperity: Canada. Retrieved from http://p2pcanada.ca/files/2014/03/The-Role-of-Employers-in-Bridging-Newcomers-Absorption-and-Integration-in-the-Canadian-Labour-Market-A-Knowledge-Synthesis-Project.pdf

endimmigrationdetention.com. (2015). End Immigration Detention. Retrieved November 19, 2015, from http://endimmigrationdetention.com/

Evans, C. J. (2013). Adjudicating Contested Values: Freedom of Religion and the Oakes Test. *Journal of Law & Equality, 10*, 5.

Fairclough, N. (2013). Critical discourse analysis and critical policy studies. *Critical Policy Studies*, *7*(2), 177–197.

Farbey, J., Sharpe, R., & Atrill, S. (2011). *The Law of Habeas Corpus*. Oxford University Press. Retrieved from http://www.oxfordscholarship.com/view/10.1093/acprof:oso/9780199248247.001.0001/acprof-9780199248247

Flick, U. (2014). *The SAGE Handbook of Qualitative Data Analysis*. 1 Oliver's Yard, 55 City Road, London EC1Y 1SP United Kingdom: SAGE Publications Ltd. Retrieved from http://srmo.sagepub.com/view/the-sage-handbook-of-qualitative-data-analysis/SAGE.xml

Goldman, R. M. (2002). *The Future Catches Up: Arms control, peacekeeping, political behavior*. iUniverse.

Government of Canada, C. B. S. A. (2011). *ARCHIVED - CBSA Detentions and Removals Programs- Evaluation Study* (Report). Retrieved from http://cbsa-asfc.gc.ca/agency-agence/reports-rapports/ae-ve/2010/dr-rd-eng.html

Government of Canada, C. B. S. A. (2014, September 30). Arrests and Detentions. Retrieved November 4, 2014, from http://www.cbsa-asfc.gc.ca/security-securite/arr-det-eng.html#_s4

Graves, S. (2010). Databases. In N. Salkind, *Encyclopedia of Research Design*. 2455 Teller Road, Thousand Oaks California 91320 United States: SAGE Publications, Inc. Retrieved from http://knowledge.sagepub.com/view/researchdesign/n99.xml

Gros, H., & Paloma, V. G. (2015). *"We Have No Rights": Arbitrary imprisonment and cruel treatment of migrants with mental health issues in Canada* (p. 122). Toronto: University of Toronto Faculty of Law. Retrieved from http://ihrp.law.utoronto.ca/utfl_file/count/PUBLICATIONS/IHRP%20We%20Have%20No%20Rights%20Report%20web%20170615.pdf

Gryll, S. (2011). IMMIGRATION DETENTION REFORM: NO BAND-AID DESIRED. *Emory Law Journal*, *60*(5), 1211.

HAGAN, J., LEVI, R., & DINOVITZER, R. (2008). THE SYMBOLIC VIOLENCE OF THE CRIME-IMMIGRATION NEXUS: MIGRANT MYTHOLOGIES IN THE AMERICAS. *Criminology & Public Policy*, *7*(1), 95–112.

Hernández, D. (2013). Detained in Obscurity: The U.S. Immigrant Detention Regime. *NACLA Report on the Americas*, *46*(3), 58.

Howarth, D., & Griggs, S. (2012). Poststructuralist Policy Analysis: Discourse,Hegemony and Critical Explanation. In F. Fischer, *The Argumentative Turn Revisited: Public Policy as Communicative Practice*. Duke University Press.

Hussan, S. (2014). Indefinite, arbitrary and unfair: The truth about immigration detention in Canada. Retrieved from http://endimmigrationdetention.com/2014/06/09/the-truth-about-immigration-detention-in-canada-revealed/

Immigration Refugee Protection Act. (2001). Consolidated federal laws of canada, Immigration and Refugee Protection Act. Retrieved November 10, 2015, from http://laws-lois.justice.gc.ca/eng/acts/I-2.5/FullText.html

Kalhan, A. (2010). Columbia Law Review – Rethinking Immigration Detention. Retrieved from http://columbialawreview.org/rethinking-immigration-detention/

Khosravi, S. (2009). Sweden: detention and deportation of asylum seekers. *Race & Class*, *50*(4), 38–56.

Kronick, R., & Rousseau, C. (2015). Rights, Compassion and Invisible Children: A Critical Discourse Analysis of the Parliamentary Debates on the Mandatory Detention of Migrant Children in Canada. *Journal of Refugee Studies*.

Lamey, A. (2013). *Frontier Justice: The Global Refugee Crisis and What To Do About It*. Anchor Canada.

Larsen, M., & Piché, J. (2009). Exceptional State, Pragmatic Bureaucracy, and Indefinite Detention: The Case of the Kingston Immigration Holding Centre. *Canadian Journal of Law and Society*, *24*(2), 203–229.

Leerkes, A. (2010). A Case of Mixed Motives?: Formal and Informal Functions of Administrative Immigration Detention. *The British Journal of Criminology*, *50*(5), 830–850.

Le, T., Lê, Q., & Short, M. (Eds.). (2009). *Critical discourse analysis: an interdisciplinary perspective*. New York: Nova Science Publishers.

Long-Sutehall, T., Sque, M., & Addington-Hall, J. (2011). Secondary analysis of qualitative data: a valuable method for exploring sensitive issues with an elusive population? *Journal of Research in Nursing*, *16*(4), 335–344.

Lucas, A. (2005). Huddled masses. *Punishment & Society*, *7*(3), 323–329.

MacIntosh, C. (2012). Insecure Refugees: The Narrowing of Asylum-Seeker Rights to Freedom of Movement and Claims Determination Post 9/11 in Canada. *Review of Constitutional Studies*, *16*(2), 181–209.

Manson, D. (2013). *Strangers by sea: crafting of a "well-grounded" fear*. Retrieved from https://open.library.ubc.ca/cIRcle/collections/ubctheses/24/items/1.0073876

Mehler Paperny, A. (n.d.). Canada's Unwanted: Non-citizens paid to leave, jailed without charge, die in secret. Retrieved from http://globalnews.ca/news/1645726/canadas-unwanted-non-citizens-paid-to-leave-jailed-without-charge-die-in-secret/

Mountz, A., Coddington, K., Catania, R. T., & Loyd, J. M. (2013). Conceptualizing detention: Mobility, containment, bordering, and exclusion. *Progress in Human Geography*, *37*(4), 522–541.

Nakache, D. (2011). The Human and Financial Cost of Detention of Asylum-Seekers in Canada, a study researched and written for the United Nations High Commissioner for Refugees (UNHCR), 104.

Naumetz, T. (n.d.). Mass detention of 300 Tamil migrants cost $18-million, says Canada Border Services Agency. Retrieved December 17, 2015, from http://www.hilltimes.com/news/2011/02/14/mass-detention-of-300-tamil-migrants-cost-%2418-million-says-canada-border-services-agency/25475

Oliphant, B. J. (2015). Taking purposes seriously: The purposive scope and textual bounds of interpretation under the Canadian Charter of Rights and Freedoms. *University of Toronto Law Journal*, *65*(3), 239–283.

Pogge, T. (2001). Priorities of Global Justice. *Metaphilosophy*, *32*(1-2), 6–24.

Pratt, A. (2005). *Securing borders : detention and deportation in Canada*. Vancouver: UBC Press.

Proctor, J. (2015). MV Sun Sea people smuggling decision expected in Supreme Court. Retrieved December 17, 2015, from http://www.cbc.ca/news/canada/british-columbia/mv-sun-sea-human-smuggling-refugee-board-supreme-court-1.3339069

Public Safety. (2015, December 16). Security certificates. Retrieved December 17, 2015, from http://www.publicsafety.gc.ca/cnt/ntnl-scrt/cntr-trrrsm/scrt-crtfcts-eng.aspx

Putnam, R. D. (1996). The strange disappearance of civic America. *The American Prospect*, (24), 34.

Schuster, L., & Majidi, N. (2013). What happens post-deportation? The experience of deported Afghans. *Migration Studies*, mns011.

Silverman, S. (2014). In the wake of irregular arrivals: changes to the Canadian immigration detention system. *Refuge*, *30*(2), 27+.

Silverman, S. J., & Massa, E. (2012). Why Immigration Detention is Unique. *Population, Space and Place*, *18*(6), 677–686.

Singh v. Minister of Employment and Immigration, 1 SCR 177 (C April 4, 1985). Retrieved from http://canlii.ca/t/1fv22

Stumpf, J. (2006). The Crimmigration Crisis: Immigrants, Crime, and Sovereign Power, The. *American University Law Review*, *56*, 367.

truthaboutdetention.com. (n.d.). Did you know Harper has jailed 80,000 people without charge? Retrieved December 15, 2015, from http://www.truthaboutdetention.com/new_facts

UNHCR Global Trends 2014. (n.d.). Retrieved November 20, 2015, from http://www.unhcr.org/556725e69.html

United Nations. (1948). The Universal Declaration of Human Rights. Retrieved April 19, 2015, from http://www.un.org/en/documents/udhr/

United Nations Human Rights Office of The High Commissioner. Convention relating to the Status of Refugees. Retrieved from http://www.ohchr.org/EN/ProfessionalInterest/Pages/StatusOfRefugees.aspx

WACQUANT, L. (2001). Deadly Symbiosis. *Punishment & Society*, *3*(1), 95–133.

Waldman, L., & Swaisland, J. (2012). *Inadmissible to Canada: the legal barriers to Canadian immigration*. Markham, Ont: LexisNexis Canada.

Wales, J., & Rashid, M. (2013). No longer a place of refuge Health consequences of mandatory detention for refugees. *Canadian Family Physician*, *59*(6), 609–611.

Wilsher, D. (2012). *Immigration detention: law, history, politics*. Cambridge ; New York: Cambridge University Press.

Wortley, S. (2009). Introduction. The Immigration-Crime Connection: Competing Theoretical Perspectives. *Journal of International Migration and Integration*, *10*(4), 349.