

Out of Sight, Out of Mind:

An Analysis of Immigration Detention Practices in Canada and Germany



PRESENTER:

Lea von Salzen

Arts and Social Sciences

Canada and Germany's immigration detention frameworks leave room for violations of international human rights.

INTRODUCTION

Criticisms from international human rights activists on a variety of matters related to Canada and Germany's immigration detention frameworks highlight the need for an examination of human rights impacts. This thesis explores the legal frameworks of immigration detention in Canada and Germany to illuminate potential gaps in human rights protection. Key themes identified in the literature include racial discrimination, conditions of imprisonment, and the detention of children.

METHODS

- Qualitative comparative legal content analysis
- Critical Legal Studies - to expose the assumptions that underlie the framework and see who is not benefitting from the system
- Sampled 27 international and federal laws and policies governing immigration detention in Canada and Germany, in force in January 2022
- Two inductive and deductive rounds of coding in NVivo 12 to identify key passages

INITIAL FINDINGS (See Table 1.)

Canada and Germany differ in their:

- Grounds for detention
- Maximum length of detention permitted
- Detention review process
- Protection and regulation of the location of detention
- Access to immigration detention facilities by international human rights oversight bodies
- International legal accountability

DISCUSSION

- Germany and Canada both have areas in which their immigration detention systems leave potential for human rights violations
- Canada's lack of membership to a higher international body means they lack external accountability at international courts
- Further research is needed into how legislations and policies are actually applied, and the voices of those experiencing immigration detention need to be represented in further research



TABLE 1. SUMMARY OF INITIAL FINDINGS

	Canada	Germany
Grounds for immigration detention	Considers lack of identity a ground to detain	Does not consider lack of identity a ground to detain
Maximum length of immigration detention	Indefinite	18 Months
Ordering of immigration detention and review process	Detention reviewed and maintained by members of the Immigration Refugee Board	Detentions ordered and reviewed by a regional court judge
Use of prisons to hold immigration detainees and need to separate from the criminally incarcerated population	No federal laws regulating location or need to separate immigration detainees from the criminally incarcerated population if detained in prison	Will end housing of immigration detainees in prisons in 2022 and location and need to separate from criminal population is clearly defined in federal law
Requirement to authorize international inspection of detention facilities	No, as Canada has not signed the <i>UN Optional Protocol to the Convention Against Torture</i>	Yes, as Germany has signed the <i>UN Optional Protocol to the Convention Against Torture</i>
Higher international legal oversight	Canada lacks higher external accountability at international courts for immigration detention matters	Germany is legally accountable to the European Court of Human Rights and the European Court of Justice

Lea von Salzen,
lea_von_salzen@sfu.ca