

## **Promoting and Challenging Immigration Detention in Canada:**

Understanding the Role of Advocacy Coalition Groups in Canada's  
Immigration Detention Policy Subsystem

Vanessa Chidi Wachuku

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## **Abstract**

*Advocacy coalition groups such as closed border supporters and open border advocates play a role in Canada's immigration detention policy subsystem. Using political mobilization, they exploit pathways of policy change to promote policy objectives which favour or limit policy changes relating to the detention of asylum seekers and irregular migrants for immigration purposes in Canada. This paper investigates the role of actors from opposing advocacy coalition groups in promoting or challenging immigration detention in Canada. The paper adopts the theoretical underpinnings of "Advocacy Coalition Framework" as a lens of analysis to trace the role of advocacy coalition groups in recent history of Canada's immigration detention policy subsystem. This paper assumes an actor-centric approach with an aim to contribute to current body of knowledge on Canada's immigration detention policy subsystem.*

**Keywords:** immigration detention; open border advocates; closed border supporters; advocacy coalition groups; advocacy coalition framework; Canada; policy subsystem

## Table of Contents

Abstract.....	i
Table of Contents.....	ii
Introduction .....	3
Immigration Detention .....	4
Canada .....	4
Advocacy Coalition Framework .....	5
Policy Subsystem: Actors and Coalition Groups .....	6
Policy changes.....	8
Political mobilization .....	8
Temporal approach – Moments .....	9
Moment I: 1987 .....	9
Moment II: 2012 .....	11
Moment III: 2015 .....	12
Future Direction: Alternate Forms of Detention .....	13
References .....	16

## Introduction

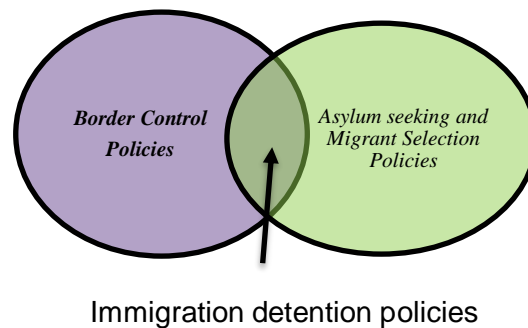
There are many pathways to irregular migration which is a border “movement that takes place outside the regulatory norms of the sending, transit and receiving countries” (International Organization for Migration, 2017, p.300). This type of movement includes asylum seekers who are people who have applied for asylum in another country and are awaiting a decision on their refugee status (United Nations High Commissioner for Refugees, 2001). The Global Trends Report by the United Nations High Commissioner for Refugees (UNHCR) observes there were 2,826,508 pending asylum cases from this type of border in 2016 (UNHCR, 2016). Scholars acknowledge this type of movement stems from “push” and “pull” factors arising from pressures such as globalization, persecution, inequality, demography, human rights violation, violence, torture, disaster, persecution, conflict, environmental change and neoliberalism (Manderson, 2013; Taylor, 2005; Juss, 2004). These factors promote an increase in irregular migration, global movement, forced displacement and asylum-seeking as people respond in search of protection from persecution, liberty, better conditions of life, well-being and economic stability in destination states (Manderson, 2013).

The International Organization for Migration (IOM) estimates that in 2015, 65.6 million people were forcibly displaced with 21 million engaged in global movement and 3.2 million seeking asylum (IOM, 2016). The office of the United Nations High Commissioner for Refugees (UNHCR) confirms this number and observes that half of the estimated 65.6 million people are less than 17 years (UNHCR, 2016). Meanwhile, as of December 2017, the number had increased to 68.5 million, primarily from war, conflict and persecution (UNHCR, 2018). Some receiving countries consider unauthorized border crossing or irregular migration a criminal offence (Sampson & Mitchell, 2013). This consideration contradicts observations by the United Nations Special Rapporteur on the Human Rights of Migrants who contends that irregular migration is not a crime (UN, 2017). More so, Article 31 of the *Convention relating to the Status of Refugees* (Refugee Convention) establishes that States should not impose penalties on asylum seekers on account of their irregular arrivals provided they present themselves without delay to the authorities and show good cause for their illegal entry or presence (Refugee Convention, 1951).

Despite ratifying the Refugee Convention, some receiving countries adopt a conflicting stance by framing asylum seekers and irregular migrants as security and economic threats (Amin-Khan, 2015). Nation states demonstrate this construction through negative discourse, legislation and enforcement; and implement restrictive border control mechanisms such as immigration detention to restrict irregular global movement (Huysmans, 2006; Wæver, 2004; Buzan *et. al.*, 1998). This paper begins with an introduction of immigration detention while providing a background on Canada's immigration detention policy subsystem. Next, it provides an overview of Advocacy Coalition Framework (Sabatier & Weible, 1988) as a lens of analysis to investigate the role of actors and advocacy coalition groups in the subsystem. The paper adopts a temporal approach confining within a period of 1987-2017. 1987 is the departure point, as immigration detention was first introduced in Canadian legislation (Government of Canada, 1987). The time span ends in 2017 to allow for a comprehensive investigation spanning over three decades (1987-2017). The paper concludes with the current state that observes the use of alternate forms of immigration detention in Canada.

## Immigration Detention

Detention for immigration purposes is at the intersection of border control and asylum & migrant selection policies. This intersection assumes the adoption of border control measures to limit an entry of migrants such as asylum seekers. The International Detention Coalition (2016) confirms this assumption by summarizing immigration detention as a coercive administrative mechanism states adopt to control immigration and restrict the liberty of non-citizens “for migration-related reasons” (International Detention Coalition, 2016). This mechanism is administrative as it is “undertaken under civil law and administrative authority” (as Schriro espouses in Brotherton *et. al.*, 2013).



**Figure 1: Immigration Detention Policies**

Border control mechanisms like immigration detention are primarily justified by claims of “sovereignty, border control, national security, public safety and deportation or expulsion” (UNHCR 2014, p.28). Originally implemented from the late twentieth century, the practice of immigration detention is rising globally (Fiske 2016; Guia *et. al.*, 2016; Bosworth & Turnbull, 2015) despite that the practice of detention for immigration purposes violates the human rights of migrants (United Nations, 2015). Immigration detention has become an embedded feature of developed states immigration and border control policies (Nethery & Silverman, 2015; Flynn, 2012), irrespective that “governments can not be permitted to imprison the citizens who seeks freedom in another land” (Juss 2004, p. 307).

## Canada

The passage of the *Refugee Deterrents and Detention Act* (C-84) which was an “*Act to amend the Immigration Act, 1976 and the Criminal Code in consequence thereof*” (Government of Canada, 1987) introduced immigration detention in Canada. Upon passage, C-84 turned into C-36 and amended the *Immigration Act, 1976* (Parliament of Canada, 1988). In particular, Section 12 (1) amended Section 104.1 (1) (a) (b) of the *Immigration Act, 1976* by conferring immigration detention powers to an immigration officer who,

*shall detain the person and forthwith report the detention to a senior immigration officer who may continue or order the continuation of the detention for a period not exceeding seven days from the time the person was first detained under this Act (p. 999, Parliament of Canada, vol. I 979, 1988)*

Section 12 (2) (a) (b) of C-36 conferred additional period of immigration detention. This

conferment embedded the immigration detention policy in Canada's immigration, asylum and border control policies. The policy of detention for immigration purposes has changed since an inception of the policy in 1987. This paper adopts the Advocacy Coalition Framework (ACF) which is a dominant theory of the policy process that spans across a policy subsystem (Cairney, 2011) to understand the role of actors and advocacy coalition groups in policy changes relating to detention for immigration purposes in Canada.

## Advocacy Coalition Framework

Advocacy Coalition Framework (ACF) was developed by Sabatier & Weible (1988) as a “comprehensive approach to understanding politics and policy change over time ...and forms of political behaviours” (Jenkins-Smith *et. al*, 2014, p.184). This approach studies “complex, enduring public policy processes involving multiple actors” (Stich & Miller, 2008, p. 69). Jenkins-Smith *et. al.*, (2014) support this view by observing that ACF provides a way to understand a difficult policy process that consists of multiple actors who converge to form coalition groups with similar belief system. ACF contends that beliefs guide the formation of advocacy groups who seek membership based on shared belief system. Cairney (2011) defines these belief systems as “a complex mix of theories about how the world works (and), how it should work” (p. 204). ACF categorizes the beliefs into three typologies: *deep core beliefs*, *policy core beliefs* and *secondary aspects* (Cairney 2011; Sabatier & Jenkins-Smith 2014; Jenkins-Smith *et. al.*, 2017). Whereas deep core beliefs are rooted in an actor's underlying personal philosophy, *policy core beliefs* are grounded in an actor's deep-seated policy positions and abide by the scope of the policy subsystem (Cairney 2011). Secondary aspects relate to the implementation process to achieve the policy change and include funding, delivery and implementation of policy goals.

Notwithstanding the positionality of specific roles in discrete groups, ACF assumes a fluidity of boundaries between “competing coalitions, policy brokers and government authorities” (Cairney 2011, p. 204). This fluidity responds to changes in policy core and secondary aspects beliefs more than deep core beliefs which Jenkins-Smith *et. al.*, 2017 assert are difficult to change. Coalition members may thereby move from one group to another based on policy issues which align with their deep and policy core beliefs (Sabatier & Weible 2014). Whereas these actors originate from divergent groups, sectors and levels of government, they are bound by similar beliefs, which they collectively promote to mobilize and advance their political objectives and “influence a policy sub-system” (Jenkins-Smith *et. al.*, 2017, p. 148). Members may include policy analysts, academia, interest groups, bureaucrats, elected and appointed officials and the media. Fluidity of boundaries occurs between “competing coalitions, policy brokers and government authorities” (Cairney 2011, p. 204).

Whereas deep core beliefs do not change, policy core and secondary aspects beliefs may change (Jenkins-Smith *et. al.*, 2017; Nowlin, 2011). Cairney (2011) asserts these types of “beliefs act as the glue which binds actors together within advocacy coalitions” (p. 200), as actors with commonality in shared belief system gain membership in specific advocacy coalition groups with an aim to promote specific objectives. Meanwhile, opposing groups derive membership from actors with divergent belief system. Whereas homogeneity in belief systems reinforces stasis or incremental policy changes by a dominant coalition group in the policy subsystem, opposing minority group exploit pathways to policy change such as internal/external shocks, policy learning and negotiated agreements (Jenkins-Smith *et. al.*, 2017) through mobilization efforts such as debates to promote their policy objectives and translate their beliefs to policy outcomes.

Advocacy Coalition Framework (ACF) “contribute(s) to an understanding of policy change and stability” (Jenkins-Smith *et. al.*, 2017, p. 144) by focusing on policy learning and change “within a policy subsystem” (Nowlin, 2011, p. 46). It recognizes “that (an) understanding of public policy requires focusing on temporal processes that characterize public policy over time” (Jenkins-Smith *et. al.*, 2017, p. 143). Thereby, supports an investigation of the role of advocacy coalitions over a long period of time (Sabatier & Jenkins-Smith, 1988).

Advocacy Coalition Framework (ACF) explains how the behaviours of coalition actors influence or change policy within a subsystem that is comprised of a “set of actors who are involved in dealing with a policy problem” (Cairney 2011, p. 201). These groups compete against one another to achieve their policy objectives by “romanticiz(ing) their own cause and demoniz(ing) their opponents” (Cairney & Heikkila 2014, p. 370). Cairney & Heikkila (2014) explain that demonization leads to “devil shift” which Sabatier *et. al.*, (1987) define as actors’ perception of their opponents as “stronger and more “evil” than they actually are” (p. 450). The opposing advocacy coalition group mobilizes to disrupt the dominant policy objectives and seek opportunities to advance theirs through policy changes. To achieve these policy changes, Howlett & Ramesh (1998) suggest they adopt patience, persuasive argument and tenacity. Canada’s immigration detention policy subsystem engages with opposing advocacy coalition groups with aims to promote or challenge immigration detention practices. Accordingly, ACF offers an explanation of the role of closed border supporters and open border advocates and provides an avenue for policy-oriented learning and negotiated agreements between actors and opposing coalition groups in Canada’s immigration detention policy sub-system.

### **Policy Subsystem: Actors and Coalition Groups**

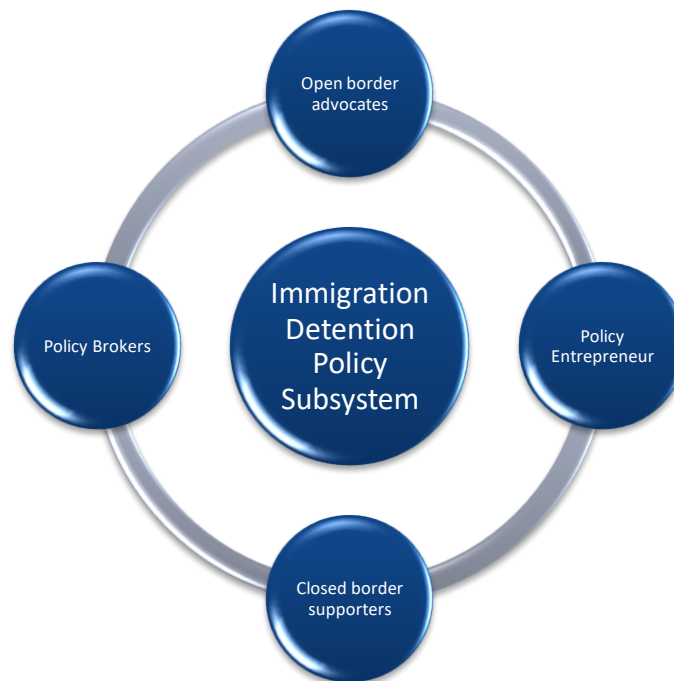
ACF exercises its functions in the policy subsystem, which consists of a “set of actors who are involved in dealing with a policy problem” (Cairney 2011, p. 201). The set of actors are organized on the “basis of shared beliefs and coordination strategies” (Jenkins-Smith *et. al.* 2017, p. 141) with an aim to promote their policy objectives. Actors may comprise of people, interest groups, government bodies or private organizations and are organized around shared ideology, belief system or interpersonal connections (Cairney & Heikkila (2014). This interconnection facilitates membership in opposing advocacy coalition groups within a subsystem. In Canada, the immigration detention policy subsystem consists of actors and opposing coalition groups categorized as “*closed border supporters*” and “*open border advocates*”. This paper considers immigration detention promoters as “*closed border supporters*” who subscribe to restrictive border policies based on protectionist claims relating to sovereignty, welfare state and citizenship. Meanwhile “*open border advocates*” challenge immigration detention which may be based on beliefs grounded on protection of the human rights and liberty of migrants including asylum seekers. These opposing groups play a role in Canada’s immigration detention policy subsystem. Using political mobilization, they exploit the pathways of policy change to promote policy objectives that favour or limit policy changes relating to the detention of asylum seekers and irregular migrants for immigration purposes in Canada.

Membership in these coalition groups draws from different groups. Opposing *closed border supporters* engage with members with economic and security protectionist lens and may include actors such as ethno-nationalists underpinned in right centered approach who are driven by security and economic concerns to protect the border, cultural identity, welfare state and wages from the “others”. Status of the “other” derives from an absence of membership in Canadian citizenry. Closed border supporters may also include protectionists who criminalize irregular migration which Strumpf (2006) coins as



“crimmigration”. Interest groups such as private corporations whose employees handle daily operations in immigration holding centers may gain membership based on financial benefits. To illustrate, Poynter (2012) observes that a private security firm’s contract within a 4-year period (2004-2008) amounted to \$19 million. Based on the ideology of a dominant political party in power, closed border supporters may include elected politicians who subscribe to ideology and belief system that promote restrictive immigration detention policies. *Open border advocates* may draw membership from refugee lawyers, Non-Governmental Organization (NGO) officials, UNHCR Canada representatives, refugee and migrant groups, legal aid clinics, media, human and civil rights organizations, researchers, allied agencies/non-governmental actors, social workers and health practitioners who note varied negative health impact of immigration detention.

Other actors in Canada’s immigration detention subsystem include policy brokers who are “actors within sub-systems that seek to minimize conflict and produce workable compromises between competing advocacy coalitions” (Cairney 2011, p. 201). They provide solutions and aim to resolve conflicts between adversarial coalition groups (Sabatier & Weible, 2014). Bratt (2013) observes the meditative nature of policy brokers who consist of senior bureaucrats, elected officials and regulatory bodies. Within Canada’s immigration detention policy subsystem policy brokers include the Federal Court of Canada and Supreme Court of Canada. The Minister of Public Safety and Emergency Preparedness is the Sovereign and the final decision-making governmental authority on policy issues relating to immigration detention. These actors in Canada’s immigration detention subsystem play a role in promoting or challenging policies and policy changes surrounding the detention asylum seekers and irregular migrants for immigration purposes in Canada.



**Figure 2: Actors in the Immigration Detention Policy Subsystem**

## Policy changes

A policy change refers to any shift in policy objectives that leads to a change in existing practices (Kingdon, 1993). Cairney (2011) contends these changes can either sudden or incremental and may include “policy goals, program specifications, policy instrument types and instrument component parts” (Howlett & Ramesh 2002, p. 33). Over the years, Canada's immigration detention policy has undergone numerous changes. These changes began with an introduction of legislation, practices and policies that formalized detention for immigration purposes in 1988 (Government of Canada, 1988). Policy changes continued with most notable changes occurring in response to the 9/11 terrorist events which occurred in the United States. The Canadian Council for Refugees (2015) observes the 9/11 terrorist events created conditions that promoted numerous public policy changes relating to detention for immigration purposes in Canada. These changes introduced legislation which expanded the detention of asylum seekers and irregular migrants for immigration purposes. Some of these changes from 2001 onward include the *Immigration and Refugee Protection Act, 2001*; *Anti terrorism Act, 2001*, *Balanced Refugee Reform Act, 2010* and the *Protecting Canada's Immigration Systems Act, 2012*.

## Political mobilization

Coalition groups such as open border and closed border advocates reinforce or challenge policy changes. These adversarial advocacy coalition groups mobilize and exploit pathways of policy change to promote their policy objectives (Jenkins-Smith *et. al.*, 2017). When coalition groups mobilize, their actions are motivated to change or maintain current policy objectives. Mobilization that leads to policy change occurs when there is an incremental or significant disruption in dominant policy objectives. Whereas there are numerous types of mobilization, this paper adopts a political approach to define mobilization. Nedelmann (1987) explains mobilization as “actors’ efforts to influence the existing distribution of power, encompassing not only mobilization activities aimed strictly at legitimating the existing distribution of power, but also activities aimed at redistributing power or reshaping the basis of the power structure” (pp. 190-191). Nedelmann continues by noting that mobilization adopts a political lens when “actors attempt to influence the existing distribution of power one way or another” (p. 191). This paper contends that political motivation acts as a vehicle that drives advocacy coalition groups towards exploiting the pathways of policy change to promote or challenge immigration detention policies in Canada.

Advocacy Coalition Framework supports the use of a temporal approach to investigate policy changes over time (Jenkins-Smith *et. al.*, 2017). As such, the section below adopts a temporal approach to investigate the role of actors and coalition groups in policy changes relating to detention for immigration purposes. In particular, the section illuminates specific moments in time when opposing closed border supporters and open border advocates exploited pathways of policy change through political mobilization to favour or limit policy changes. These pathways of policy change include external shocks, internal shocks, policy learning and negotiated agreements. Whereas these pathways are instrumental in facilitating policy change, they require enabling factors such as heightened public and political attention, changes in agenda, redistribution of coalition resources and the opening and closing of policy venues (Jenkins-Smith *et. al.*, 2017). These pathways and enabling factors are interconnected to promote policy change and political mobilization acts as the vehicle that bridges the pathways of policy change to understand

the roles of advocacy coalition groups in these changes. More so, the concept of “political mobilization” provides an avenue for the intersection of pathways of policy learning as occurrence of *external* or *internal shocks* may provide opportunities for *policy-oriented learning* which may promote *negotiated agreements* with opposing advocacy coalition group to facilitate policy change. Accordingly, along with enabling factors, political motivation may act as a vehicle that drives advocacy coalition groups to exploit pathways of policy change.

### **Temporal approach – Moments**

This section provides three critical moments to illustrate the role of advocacy coalition groups in Canada’s immigration detention policy system. Whereas there may be other critical moments, the following moments illuminate the role of closed border supporters and open border advocates in promoting or limiting policy changes relating to the immigration detention of asylum seekers and irregular migrants in Canada.

#### ***Moment I: 1987***

Prior to 1987, Canada’s immigration policy system adopted an “open border” stance particularly for migrants of European origin. Kelley & Trebilcock (1998) contend that whereas countries such as Poland were granted special measures that promoted an increased number of successful asylum claims, migrants from developing countries were not as successful. Meanwhile, “*pull factors*” such as Canada’s ratification of the 1951 Convention relating to the Status of Refugees and subsequent recognition of United Nations Convention Refugees along with “*push factors*” such as persecutions and ethnically-driven civil wars were instrumental in an increasing number of asylum seekers from the late 1970s into the 1980s (Pratt, 2005). Against this background was an unauthorized boat arrival of asylum seekers who arrived through irregular means as they did not gain permission to enter Canada by boat. The unauthorized boat arrival of 174 Sikh asylum seekers from India on August 1987 created an environment for closed border supporters to politicize irregular migration in Canada. This external shock or perturbation (Jenkins-Smith *et. al.*, 2017) to Canada’s immigration policy system prompted the Conservative government in power with belief systems grounded in closed border approaches to call for an emergency recall of Parliament to “deal with an issue of grave importance” (Kelley & Trebilcock, 1998, p. 417). Closed border supporters such as the government mobilized by using mechanisms such as the media to draw heightened public and political attention to irregular migration, reinforce the narrative of the “bogus” refugee and raise protectionist concerns relating to sovereignty, welfare state and border control (Hathaway, 1999; Bourbeau, 2011).

Closed border supporters focused on the unauthorized and irregular arrival to argue for restrictive immigration policies and greater control over the border and migrant selection. Accordingly, the government of the day used the unauthorized arrival of the Sikh asylum seekers as an opportunity to influence public perception on irregular migration through the mobilization of extensive media coverage and public debate. Open border advocates such as opposing political parties argued against the unwarranted nature of the emergency parliamentary session recall. In particular, opposing parties argued the arrival of 174 asylum-seeking Sikhs was small in comparison to the annual number of admitted immigrants (Kelley & Trebilcock, 1998). In response to factors such as concerns surrounding an overload of the refugee determination process due to an increase in the

number of claims and the external shock of the unauthorized arrival of Indian asylum seekers, the government of the day introduced the *Refugee Deterrents and Detention Bill* (C-84) and the *Refugee Reform Bill* (C-55) in 1987 to amend the *Immigration Act, 1976* (Canadian Council for Refugees, 1999; Bourbeau, 2011). The Bills had the policy objectives to “preserve the integrity of the inland determination system” (Hathaway, 1999, p. 354) and “streamline Canada’s refugee determination system” (Kelley & Trebilcock, 1998, p. 416). Open border advocates such as lawyers, opposing political parties and human rights groups argued against the Bills which were designed by closed border supporters to discourage asylum seeking and refugee claimants from coming to Canada (Hathaway, 1999).

The passage of the *Refugee Deterrents and Detention Act* (C-84) which was an “*Act to amend the Immigration Act, 1976 and the Criminal Code in consequence thereof*” (Government of Canada, 1987) introduced immigration detention in Canada. Upon passage, C-84 turned into C-36 and amended the *Immigration Act, 1976* (Parliament of Canada, 1988). This legislation formally introduced immigration detention provisions in the contemporary Canadian immigration policy (Parliament of Canada, 1988; Hathaway, 1999). This view is reinforced by Kelley & Trebilcock (1998) who assert that Bill C-84 specifically outlined the detention and removal of arrivals who posed a criminal or security threat to the nation as well as imposed “detention of unidentified arrivals” (p. 386). Kelley & Trebilcock (1998) further observe that Bill C-84 included “provisions allowing the detention of people who arrive without proper documentation until such time as their identities can be established” (p. 417). Bill C-84 underwent extensive debate in the policy subsystem between the Conservative Government who subscribed to closed border approaches and opposing open border advocates, comprised of members from opposing political party with divergent belief systems, who raised concerns over the potential negative impact of the Bill on the target population of asylum seekers and irregular migrants. Legal, health and human rights practitioners underpinned in open border belief system challenged the Bill while adopting policy-oriented learning and negotiated agreements to challenge the Bill. C-84 went through numerous readings and extensive debate in the House of Commons and Senate particularly on potential harmful intended and unintended consequences on asylum seekers. These consequences were discounted by the powerful closed border supporter who had a majority government. The majority government of the day did not negotiate with open border advocates as C-84 received Royal Assent on July 21, 1988 (Parliament of Canada, 2015; Hathaway, 1999). Upon receiving Royal Assent on July 21, 1988, c-84 turned into SC 1988 c-36 (*An Act to amend the Immigration Act, 1976 and the Criminal Code in Consequence thereof*) (Parliament of Canada, 1988).

The passage of C-36 formally introduced immigration detention policies and practices in Canada’s immigration, asylum and border control policies. The Act legitimized severe provisions on immigration detention of asylum seekers (refugee claimants), immediate deportation of asylum seekers with elements of criminality and imposition of fines on operators of marine vehicles who transported asylum seekers to Canada (Government of Canada, 1988). An unforeseen consequence from this penalization of irregular boat arrival is the inability of the legislation to distinguish between humanitarian and smuggling motivations of the operators (Hathaway, 1999). By coming into force, C-36 reinforced the imposition of visa on refugee producing countries, given that Canada constructed migrants from such countries as undesirables (Kelley & Trebilcock, 1998). Another consequence arising from the enactment of C-36 includes the development of “machinery to make it more difficult (for asylum seekers and irregular migrants)...to make a claim in Canada and...enter Canada” (Kelley & Trebilcock 1998, p. 418).

These restrictive policies reinforce the narrative of asylum seekers and irregular migrants as undesirables and often arise from public policy design grounded on protectionist closed border belief systems and ideology.

## **Moment II: 2012**

The role of closed border supporters and open border advocates in Canada's immigration detention policy subsystem continues with another external shock to the policy subsystem. As a pathway to policy change, the perturbation of unauthorized boat arrivals of Sri Lankan asylum seekers in 2009 and 2010, again illuminated irregular migration in Canada. Closed border advocates used the media along with public and political discourse as mobilization tools to construct these groups of asylum seekers and irregular migrants as potential terrorists and criminals (Aulakh, 2010). Against this backdrop of these arrivals was an election of a majority Conservative government in 2011 (Government of Canada, 2011). Similar to the belief system of the previous majority Conservative government in the late 1980s, the elected majority Conservative government adopted a protectionist lens relating to sovereignty, border and welfare state as evident in proposed policy changes surrounding the detention of asylum seekers and irregular migrants. This election was another shock that legitimized the ideology, political agenda and belief system of the dominant political party who were closed border supporters as they had previously unsuccessfully introduced the *Preventing Human Smuggling from Abusing Canada's Immigration System Act (C-49)* on October 21, 2010 in response to the arrival of the 492 Sri Lankan asylum seekers. Closed border supporters introduced the Bill with a first reading on same day by the 40<sup>th</sup> Parliament, at the 3<sup>rd</sup> Session (Parliament of Canada 2010). Open border advocates comprised of state and non-state actors such as human rights supporters, lawyers, health professionals and researchers mobilized to discredit the bill due to harsh penalties imposed on asylum seekers (Canadian Bar Association 2010). The Bill died in the House of Commons on November 29, 2010 in response to dissolution of legislature for the 2011 Federal Election (Parliament of Canada, 2010).

Upon forming a majority Conservative Government after the Federal Election of 2011, the dominant closed border supporters comprised of elected and appointed officials with similar belief system, mobilized once more and reintroduced Bill C-49 (*Preventing Human Smugglers from Abusing Canada's Immigration System Act*) which had died in 2010. The Bill was renamed C-4 (*Preventing Human Smugglers from Abusing Canada's Immigration System Act*). As an Omnibus Bill, C-4 was introduced on June 16, 2011 to amend the *Immigration and Refugee Protection Act*, *The Balanced Refugee Reform Act* and the *Marine Transportation Security Act* at the 41<sup>st</sup> Parliament and First Session (Government of Canada, 2011). The Bill proposed significant amendments to the *Immigration and Refugee Protection Act, 2001* by extending the duration of immigration detention of "irregular arrivals" who arrive in Canada in smuggled boats from 48 hours to one year (Library of Parliament, 2011). Bill C-4 went through First Reading in the House of Commons successfully, however was defeated by open border advocates in the Second Reading on October 3, 2011 who mobilized through policy-oriented learning from experts to block the passage of an ineffective bill that targeted asylum seekers and irregular migrants instead of smugglers (Parliament of Canada, 2011; Canadian Council for Refugees 2011). Closed border supporters who were comprised of the dominant majority political party officials once again mobilized to introduce a new omnibus Bill (*Protecting Canada's Immigration Systems Act – C-31*) on February 16, 2012 in response to Bill C-4's failure.

Whereas C-31 adopted the provisions in Bill C-4, it expanded the Ministerial powers of the Minister of Citizenship and Immigration Canada by allowing the Minister to bypass the Parliament in key decisions (*Immigration and Refugee Act 2001 s. 115 2(1)*). Closed border supporters expedited the passage of C-31 which the Minister of Citizenship, Immigration and Multiculturalism introduced on February 16, 2012 by not passing through

the Cabinet since it was a government sponsored Bill (Parliament of Canada, 2012). The Act underwent a rigorous parliamentary debate between adversarial coalitions comprised of open border advocates and closed border supporters. Open border advocates were unsuccessful in translating their belief system into enacted legislation as the Bill introduced by adversarial closed border supporters received Royal Assent on June 28, 2012 with a resolution of 159/139 (Parliament of Canada, 2012). The coming into force of C-31 legitimized a significant policy change as the Act introduced the Designated Foreign Nationals (DFN) classification which supports the mandatory detention of asylum seekers and irregular migrants who arrive in Canada in a group of two and more, with the help of human smugglers and are designated by the Minister as “irregular arrival” (CBSA, 2015; IRB, 2015). DFN classification imposes additional restrictions such as limitation of access to permanent resident status (Government of Canada, 2012). These restrictions illuminate the role of advocacy coalition groups, particularly closed border supporters in mobilizing to implement their policy beliefs through enacted protectionist legislation. Such policies and policy changes reinforce restrictive and “closed border” policy change. They embed immigration detention in Canada’s overarching immigration policy system.

### **Moment III: 2015**

In recent times, pathways to policy learning such as *external shock*, *internal shock*, *policy-oriented learning* and *negotiated agreements* (Jenkins-Smith *et. al.*, 2017) are occurring in Canada’s immigration detention policy subsystem. Open border advocates who challenge immigration detention practices such as the Canadian Council for Refugees/Conseil Canadien pour le réfugiés, End Immigration Detention Network, legal and health advocates, scholars and practitioners engage with the concept of political mobilization and exploit these pathways to advance their policy objectives. The external perturbation of a federal election in 2015 ushered into power a majority Liberal government (Government of Canada, 2015). This external shock which occurred outside the policy subsystem spearheaded in a government with a historical background underpinned in implementing certain open border and multiculturalism policies. Open border advocates exploited this perturbation along with enabling factors such as changes in agenda (Jenkins-Smith *et. al.*, 2017) to challenge immigration detention practices and promote policy changes in Canada’s immigration detention policy subsystem. Some of these policy changes relate to an indefinite detention practice as the UN raised concerns on this practice immediately prior to the federal election (United Nations 2015). These concerns focused on the indefinite nature of Canada’s immigration detention policy without statutory time limits which is inconsistent with Canada’s international human rights obligations notably stemming from the *UN Convention relating to the Status of Refugees*, the *International Covenant on Civil and Political Rights* and the *Convention against Torture*. Open border advocates challenged this practice of indefinite immigration detention using the court as the policy broker.

Whereas judicial review of any administrative decision such as an immigration detention review is exclusively handled by the Federal Court as it is a federal matter, the Ontario Court of Appeals ruling in *Chaudary v. Canada* which occurred one day after the federal election that was held on October 19, 2015, is a landmark ruling as previously, immigration detainees were unable to access the provincial courts to challenge their detention (Canadian Legal Information Institute, 2015). Arising from the court ruling, immigration detainees are now able to access habeas corpus relief in provincial courts and can challenge their detention (Jackman espouses in Etienne, 2015). This access is important for migrants who face long-term detention (Seligman, 2015). Open border advocates challenge this indefinite approach that subscribes to experiences of “detention limbo” with recent unsuccessful challenge through the court who is a policy broker. The

court rulings in *Brown v. Canada* in 2017 found Canada's immigration detention policy subsystem constitutional and legal, however with posed some administration flaws (Lorriggio, 2017; Kim, 2017). Notable is this practice of indefinite immigration detention is an area the current government identifies for review in the National Immigration Detention Framework (Government of Canada, 2016). Open border advocates exploit enabling factors such as changes in agenda and the opening and closing of policy venues such as the Federal Election of 2015 to promote policy objectives that challenge immigration detention in Canada. Further, open border advocates mobilize when internal shocks occur to challenge immigration detention practices in Canada. Over the past 18 years from 2000, sixteen asylum seekers and irregular migrants have died while detained for immigration purposes with the most recent death on October 30, 2017 (Kennedy, 2017; Keung, 2017). Along with the occurrence of these *internal shocks*, the policy subsystem experiences *policy-oriented learning* and *negotiated agreements* as other pathways to policy change.

Whereas open border advocates continuously engage with other actors in the immigration detention policy subsystem to challenge immigration detention policies and practices, specific areas of focus relate to the immigration detention of vulnerable groups such as children, people with mental health needs, seniors and pregnant women. For example, the detention of children, specifically the detention of Canadian children in immigration holding centers as "guests" (Kronick *et. al.*, 2015) of their detained parents has gained momentous attention in the public and political arena. The policy issue of detention of minors illustrate the role of open border advocates in policy-oriented learning and negotiated agreements to promote their beliefs to challenge and end the detention of children in Canada. Whereas numerous health & legal advocates, scholars & practitioners and advocacy groups such as the Justice for Children and Youth (JFCY) have called for an end to the immigration detention of children for years, a report by the International Human Rights Program (Gros, 2017) on detained Canadian children introduced policy-learning opportunities. Open border advocates mobilized political, public and policy actors such as the Senate of Canada who called for an end to the policy of detaining minors in immigration holding centres (Senate of Canada, 2017). This call aligns with the belief system of open border advocates comprised of youth, child, health, legal and human rights actors who mobilize to challenge and end the immigration detention of children in Canada. The current government responded by announcing a review of the policy which illustrates a policy shift (Government of Canada, 2017).

There is heightened political and public interest on the immigration detention of children in Canada. In *B.B. and Justice For Children and Youth v Minister of Citizenship and Immigration (Immigration Detention of Child)*, the Federal Court Order ruled that CBSA hearing officers must consider the best interests of children when reviewing the immigration detention of their parents (JFCY, 2016). Open border advocates politically mobilize through debates in courts to challenge the immigration detention of children in Canada. They engage with actors with shared beliefs such as the UNHCR and the UN to end the immigration detention of children (UNHCR, 2017). At the time of writing, the government is proposing policy changes to the national detention standards which include a review of the immigration detention of children (Government of Canada, 2017). These proposed policy changes appear to respond to mobilization strategies by open border advocates to limit immigration detention policies and practices in Canada.

### **Future Direction: Alternate Forms of Detention**

Policy actors such as advocacy coalition groups can be considered as an explaining factor of policy changes that promote or hinder immigration detention practices

in Canada. These advocacy coalition groups in Canada's immigration detention policy subsystem exploit different pathways of policy change through political mobilization to hinder or foster immigration detention policy changes. This mobilization occurs in Canada's immigration detention policy subsystem with aims to maintain stasis or promote incremental or significant policy changes with support from pathways such as external or internal events, policy learning and negotiated agreement.

Research suggests that immigration detention imposes immediate and long-term hardship on asylum seekers and irregular migrants which is an invisible policy issue in Canada. The invisibility stems from an inability of the target group of asylum seekers and irregular migrants to access legal and procedural safeguards based on an absence of membership in Canadian citizenry. Non-membership precludes extension of automatic constitutional and loss of liberty as non-citizens are detained on grounds of questions relating to identity, risk of absconding, criminality, serious criminality, danger to the public and violations of human rights (Government of Canada, 2015). Non-membership reinforces an absence of their perspectives in the policy cycle process. There is an opportunity for competing advocacy coalition groups to engage with other policy actors in the policy subsystem, policy brokers and the sovereign to design public policies that limit harm to asylum seekers and irregular migrants. As well, there is an opportunity to promote transparency and accountability in Canada's immigration detention policy subsystem, particularly in response concerns raised in *Brown.v.Canada* (2017). These concerns center around problematic administration of the Immigration Refugee Protection Act (Canadian Civil Liberties Association, 2018). Immigration detention challengers who for the purpose of this paper are categorized as open border advocates suggest the creation of a parliamentary oversight committee (British Columbia Civil Liberties Association, 2017). A parliamentary oversight committee may address the policy broker's concern particularly stemming from open border advocates who have historically identified the policy issue of an absence of an oversight body in Canada's immigration detention policy subsystem. An establishment of a committee aims to address questions relating to who is watching the border watchers.

There are alternatives to immigration detention (ATD) to ensure that people are not detained "for reasons relating to their migratory status" (International Detention Coalition, 2016). This international coalition group proposes, along with international bodies such as the United Nations, the adoption of non-custodial measures to limit unnecessary immigration detention. Meanwhile legal instruments such as the International Humanitarian Law observe that immigration detention should only be used as a measure of last resort (UN, 2015). Open border advocates who challenge Canada's immigration detention policy reiterate the importance of ending the unnecessary practice of immigration detention, considering that Canada ratified the UN Convention on Refugee Convention. Ratification of the Refugee Convention under international law protects a person seeking refuge as long as they immediately report to the CBSA. International bodies such as the International Organization for Migration commonly known as the UN Migration Agency, Detention Watch Network and the International Detention Coalition recommend alternatives to unnecessary immigration detention. These alternatives respect the human rights of migrants, are cost-effective and effective in attaining states' border control policy objectives without violations on the human rights of migrants (International Detention Coalition, 2016). These cost effective and humane mechanisms are underpinned in community assessment and placement models which support a "traditional case management and referrals to community support services with appropriate monitoring and supervision" (Detention Watch Network, 2010). They are essential to "ensure that detention is only ever used as a last resort...in exceptional cases, provided the standards of necessity, reasonableness and proportionality have been met" (International Detention Coalition, 2016). Whereas domestic and international actors have called for an end to detention, a policy change that specifically limits detention on grounds



of flight risk and identity may limit undue harm, loss of liberty and end the practice of detention for immigration purposes<sup>1</sup> in Canada.

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<sup>1</sup> Policy objective aims to end detention for immigration purposes and does not refer to what the author considers as detention for security purposes based on grounds of criminality, serious criminality, danger and violations of human rights.

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