

# Right in principle, right in practice

Implementation  
of the Convention  
on the Rights  
of the Child  
in Canada

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## Introduction

### A CHILDREN'S RIGHTS: RIGHT IN PRINCIPLE, RIGHT IN PRACTICE

Canada is focused on the challenges of an aging population. The percentage of the population under age 18 is projected to decline from one in four persons in 2001 to one in five persons by 2021. After 2015, the number of persons over 65 retiring from the workplace will be greater than the number of persons under 15 preparing to enter the workforce.<sup>1</sup> Canada's economic and social well-being will depend on contributions from those who are children now. While the focus on aging tends to shift attention and resources from children to seniors, it is strategically important for Canada's future to develop the full potential of every child.

The best way to realize the full potential of every child is implementation of the Convention on the Rights of the Child (hereafter Convention). It ensures that the best interests of children are given priority and that all children have opportunities to develop their skills and fully contribute to society. Realizing the rights of children is not only a moral and legal obligation; it is a good economic and social investment for all Canadians.

Although the basic needs of the majority of children in Canada are met, there are significant gaps in fulfilling the rights of all children. Evidence shows growing inequity between children. That calls for particular attention to vulnerable groups of children. A growing percentage of the population under age 18 is in groups that need focused attention, such as Aboriginal children and immigrant children. Fragmentation of policies for children between different government departments and different levels of government increases the risk of children falling through cracks.

Centering public policies on the whole child, using the Convention as a framework, would benefit Canada's children and the country as a whole. To develop the full potential of every child, Canada needs to pay attention to three major areas:



- 1 **Put systemic mechanisms in place to implement children’s rights across Canada;**
- 2 **Take action on the recommendations that come from monitoring reviews; and**
- 3 **Pay attention to vulnerable groups and the specific issues in this report.**

To help Canada improve its performance, the Canadian Coalition for the Rights of Children (CCRC) collaborated with more than thirty civil society organizations and individual experts to compile a community-based analysis of progress on children’s rights in Canada. For each theme, this report highlights important data and key issues. It also makes recommendations for action. This report is supported by detailed research reports available for public use through the CCRC website, at [www.rightsofchildren.ca](http://www.rightsofchildren.ca).

## **B DEVELOPING THE REPORT**

### **Preface**

The Canadian Coalition for the Rights of Children (CCRC) thanks the many organizations and individuals who contributed to the three-year process of preparing a collective assessment of implementation of the Convention on the Rights of the Child in Canada. Each contribution, too many to name individually, adds value to the report and to the on-going process of engagement on children’s rights in Canada.

The first round of discussion, starting in 2007, identified priorities. Research, analysis, and discussion of specific themes followed. Volunteer research groups on each theme were facilitated by leaders with expertise in that theme. During 2010–11, draft reports were posted on the website for public review, critical analysis, and feedback, to enlarge the circle of engagement. Various initiatives to engage young people were included by CCRC partners at all stages of the process. The CCRC also used discussion sessions at public meetings and input through electronic means to tap into a national community of interest.

This report will be submitted to the UN Committee on the Rights of the Child for consideration in its review of Canada’s combined *Third and Fourth Reports* on the implementation of the Convention on the Rights of the Child. Canada was allowed to combine its *Third and Fourth Reports* because of delays in the reporting process. For the CCRC, this review is time for serious attention and action on children’s rights in Canada.

This report is one stop on the journey, not the end of the road. The CCRC is committed to continuing action on the issues and recommendations in this report. We invite you to join our efforts in whatever way you can. By working together we can achieve the goal of realizing the rights of all children in Canada. As this report shows, making children’s rights a top priority will be good for children, adults, and Canada.

The Board of the Canadian Coalition for the Rights of Children

### **Acknowledgements**

While we cannot name each person who contributed to this report, we want to acknowledge those who volunteered to lead on specific themes or aspects of this project. For the survey of young people, thanks go to Dr. Katherine Covell and the team at the Child Rights Center of the University of Cape Breton. A diverse group of young people gathered in three consultations in August through October 2011 to provide input about children’s rights in Canada. Some of their contributions, which remain anonymous to protect the participants’ identities, are included as quotations throughout this report. Thanks go to Tara Collins, Sarah Stevenson, Alana Kapell, the host organizations and the young people who participated in discussions of their priorities. Thanks to the National Youth in Care Network for conducting a national consultation process with young people in care, facilitated by Yvonne Andrews and a team of youth leaders. Thanks to the Kairos Aboriginal Affairs Circle and Cindy Blackstock for facilitating engagement on the rights of indigenous children. For leadership on the right to health, thanks go to a team of experts in children’s health, including Dr. Sue Bennett, Dr. Robin Williams, Dr. Nicholas Steinmetz, Dr. Lee Ford-Jones, and Ms. Lee-Ann Chapman. For early childhood development and care, a joint effort was sponsored by the Coalition of Child Care Advocates of BC and the Child Care Advocacy Association of Canada, led by Lynell Anderson and Susan Harney. Monitoring trends in criminal justice were Emily Chan, Agnes Samler, and the young people associated with Justice for Children and Youth and Defence for Children International Canada. Lisa Wolff led a systematic analysis of factors that affect the right to be free from violence, with assistance from the research team at UNICEF Canada and the research network of PREVNet Canada. The first systematic analysis of how Canada implements the right to play was facilitated by the International Play Association Canada, led by Dr. Pierre Harrison, Dr. Jane Hewes, Kim Sanderson, and Valerie Fronczek. Drawing on a continuous monitoring effort, Lisa Wolff compiled the assessment of progress on the right to education, with input from UNICEF Canada’s national network of children’s rights educators. The International Bureau for Children’s Rights did extensive research to prepare the first alternative report on implementation of the Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography. Thanks to the Canadian Council for Refugees, who provided an assessment of respect for the rights of immigrant and refugee children and launched its own public education initiative to complement this report. Thanks to Anna MacQuarrie and the Canadian Association for Community Living, who drew on years of community engagement to assess progress in realizing the rights of children with disabilities. To assess progress in implementing the Optional Protocol on the Involvement of Children in Armed Conflict, Samantha Ponting and Kathy Vandergrift drew on the on-going work of the Children and Armed Conflict Working Group in Canada. Thanks to Sara Austin, Sarah Stevenson, Michael Montgomery, and Kathy Vandergrift for a combined effort to assess children’s rights in Canada’s International Development program. Adrienne Montani and members of First Call: BC Child and Youth Advocacy Coalition drew on years of research on child poverty and recent research on child labour in Canada to contribute on these themes. Thanks to Sandra Scarth, who brought years of engagement in adoption to assess progress in realizing the rights to family, culture, and identity.

For the second round of engagement, thanks go to all the people who reviewed and commented on draft reports, including: CCRC members who participated in two AGM discussions on draft reports; members of the Interdisciplinary Research Laboratory on the Rights of the Child at the University of Ottawa who organized a meeting to provide expert review of draft reports; Marvin Bernstein of UNICEF Canada for suggestions on several drafts; and the First Call: BC Child and Youth Advocacy Coalition, who provided a provincial perspective to preparation of the report.

Thanks to the editorial committee, Lisa Wolff, Tara Collins and Kathy Vandergrift, for guiding the process through all the stages. Responsibility for combining the wide variety of inputs into one document, and any errors made in that process, goes to the primary editor, Kathy Vandergrift. This project was only possible because of generous volunteer time by everyone involved. Thanks to World Vision Canada and Plan Canada for special financial contributions to support youth engagement in the process. Thanks to board members of the CCRC for providing general oversight of the project, financial support, and on-going commitment to children's rights in Canada.

Canadian Coalition for the Rights of Children

### CCRC BOARD MEMBERS

**Sara Austin, Emily Chan, Tara Collins, Jessica McFarlane, Adrienne Montani, Micheal Montgomery, Nadja Pollaert, Agnes Samler, Sarah Stevenson, Lisa Wolff, and Kathy Vandergrift, Chairperson.**

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# Implementing All Children's Rights in Canada

## A GUIDING PRINCIPLES: PROGRESS IN IMPLEMENTATION

The following basic principles of the Convention on the Rights of the Child apply to all children's rights and all actors. Putting them into practice remains a challenge in Canada.

*View a short video of a children's rights dance at <http://www.youtube.com/watch?v=9H5BEg3yeJU> or at <http://hannahbeach.com/i-can-dance-a-better-world/>*

### Non-discrimination: Article 2

In 2003, Canada was asked by the UN Committee on the Rights of the Child to investigate evidence of discrimination in basic areas of child development, such as health and education. Affected groups included children with disabilities, children in poor households, Aboriginal children, children in refugee and recent immigrant families, and children in rural areas.

Since that time, two new income support policies for children have raised questions about inequitable treatment. The after-tax value of the Universal Child Care Benefit, introduced in 2006, and the Child Tax Credit, introduced in 2007, is less for children in low-income households than for children in higher income households.<sup>2</sup>

In 2008, the Canadian Human Rights Tribunal began hearing a claim that Aboriginal children are not receiving the same level of service for child welfare as non-Aboriginal children in similar circumstances. Canada's Auditor General verified that less money was being provided for child welfare services to Aboriginal children than for non-Aboriginal children. In 2010, the Tribunal dismissed the claim for technical reasons. It is now under appeal in the Federal Court.

Discrimination experienced by other groups of children, such as children with disabilities and young people in alternative care, are discussed in later sections of this report on these groups.

Canada's combined *Third and Fourth Reports* on implementation of the Convention does not provide evidence of any investigation, as requested in 2003, and it does not address the serious questions of discrimination in services for children. Discrimination is approached in that report as only a matter of multicultural awareness and cultural accommodation. Child protection, access to services, and opportunities for development are the areas where lack of equity needs remedial action.

The issue of equity is important in Canada for two reasons:

1. The gap between children who have access to many resources for their development and those who lack basic resources is a major issue. This was identified as the top public health priority by the country's Chief Public Health Officer in 2009 and by the provincial/territorial Council of Ministers of Health in 2007.<sup>3</sup>
2. Child related legislation and services cross federal/provincial/territorial jurisdictions and various departments within governments. Special measures are needed to ensure equitable opportunities for all children.

## RECOMMENDATIONS

ACTION	ACTORS (Lead and Main Actors)
<b>Foster public dialogue on ways to ensure non-discrimination in the Canadian context. Develop strategies that cross jurisdictional barriers and engage communities and young people directly.</b>	CCRC and other civil society groups Academic institutions All levels of government
<b>Investigate evidence of discrimination in the provision of public services, which is also prohibited under the Canadian Human Rights Act and the Charter of Rights and Freedoms.</b>	Canadian Human Rights Commission
<b>Include non-discrimination as a basic principle in the next Canada Social Transfer Agreement in 2014.</b>	Federal/provincial/territorial departments engaged in negotiating renewal of major fiscal transfer agreements for 2014

### Best Interests of the Child: Article 3

'Best interests of the child' is an important principle; it requires adults to give priority consideration to the impacts of their decisions on children. The Convention provides a comprehensive framework for determining the best interests of children. It includes:

- Taking children's views seriously;
- Emphasizing preventive and collaborative actions rather than adversarial decision-making; and
- Using graduated policies that recognize the developing capacity of young people to decide for themselves what is in their best interests.

In 2003, Canada was asked to integrate the 'best interests of the child' principle into all its laws, administrative processes, and programs for children, but little action has been taken.<sup>4</sup> The principle has been partially incorporated into the refugee determination process, where it has played a significant role in individual cases.

In 2009, Parliament passed a resolution called Jordan's Principle, which gives priority to the best interests of Aboriginal children caught in federal/provincial jurisdictional disputes over funding services for Aboriginal children. However, implementation has been slow, and the scope has been limited to a narrow range of complex medical needs.

## RECOMMENDATIONS

ACTION	ACTORS (Lead and Main Actors)
<b>Incorporate the 'best interests of the child' principle in all legislation that relates to children, such as child welfare, education, immigration, and youth justice. Identify implications and develop implementation strategies.</b>	Government departments responsible for legislation that affects children Lawyers who draft proposed legislation Parliament of Canada Provincial/territorial legislatures
<b>Use the Convention as a framework for determining the 'best interest of the child' in court and case management processes that involve children, including human rights commissions and tribunals.</b>	Judges, lawyers, social workers and psychologists who manage or advise on children's cases
<b>Implement Jordan's Principle for all Aboriginal children and all services, and then expand its application to all children's issues that cross boundaries between government departments and agencies.</b>	Government departments responsible for children's services Senior managers of agencies that serve children Community leaders
<b>Assess the best interests of children as a group, as part of child impact assessments in all policy formation processes.</b>	Government departments responsible for policies that affect children

### First Call for Children: Article 4

Budget allocations that impact children are not consistently identified in federal and provincial/territorial budgets. There is no reliable way to assess whether allocations meet the criterion of fulfilling children's rights "to the maximum extent of available resources" (article 4). Child impact assessments are not undertaken to determine how annual budget decisions affect all children or particular groups of children.

Of particular concern is the lack of a clear policy to give priority to children in times of economic



downturns or fiscal restraint. During the 2008-2009 recession, for example, the number of families with children that had to rely on provincial/territorial social assistance increased dramatically. This was of great concern because social assistance rates had been reduced far below the poverty line. No steps were taken to address the impact of this situation on children, who can suffer life-long consequences from lack of basic resources during the essential years of childhood.

The federal/provincial/territorial Early Childhood Development Agreement of 2000 required tracking and reporting actual expenditures for children under the age of six.<sup>5</sup> The initial purpose was to ensure that an increase in federal income support for children did not result in provincial/territorial reductions. The scope of reporting, however, was limited to specific programs and ages of children. It did not include all programs relating to the rights of children. More recently, the trend to pool social transfer funds to the provinces reduces the feasibility of tracking how these funds are used for children. The Canadian public cannot effectively track how much or how well their tax dollars are being used for the benefit of children.

The Canada Social Transfer Agreement, which transfers federal tax revenues to provincial/territorial governments for human services, will be renewed in 2014. This is an opportunity to increase accountability for upholding children's rights by increasing transparency in the allocation of resources for children.

## RECOMMENDATIONS

ACTION	ACTORS (Lead and Main Actors)
<p><b>Respond specifically to paragraph 18 in the Concluding Observations of the UN Committee on the Rights of the Child from Canada's second review, which recommended that Canada "take measures to prevent children from being disproportionately affected by future economic changes."</b></p>	<p>Federal government (to the UN Committee on the Rights of the Child)</p>
<p><b>Implement the principles of First Call for Children (article 4) and the progressive realization of economic, social, and cultural rights through child impact assessments and regular public reporting on budget allocations for children.</b></p>	<p>Federal, provincial, and territorial departments of finance Parliamentary Budget Office</p>
<p><b>Include compliance with the Convention in the next Canada Social Transfer Agreement and provide mechanisms for public reporting and accountability for the results achieved for children.</b></p>	<p>Federal/provincial/territorial departments who are negotiating the Canada Social Transfer Agreement for 2014 Federal/provincial/territorial auditors general</p>

## Right to Survival and Development: Article 6

Special attention is required for vulnerable groups of children in Canada who lack basic, healthy living conditions and essential opportunities for healthy development. Working-poor families and families that survive on social assistance rates well below any poverty line make trade-offs between adequate housing and adequate nutrition, with no discretionary funds to spend on child development. Widening income disparity in Canada during the last decade is accompanied by greater disparities in child development. One basic indicator of the realization of article 6 is the rate of infant mortality. Progress in Canada has stalled relative to other industrialized countries, largely because of higher rates among vulnerable groups.

### RECOMMENDATIONS

ACTION	ACTORS (Lead and Main Actors)
<p><b>Ensure that the factors considered in setting income support levels reflect children's rights to survival and development of their full potential.</b></p>	<p>Federal/provincial/territorial departments responsible for income support programs and poverty reduction strategies</p>

## Right to Be Heard and Participate: Article 12

Child participation requires adults to consider age-appropriate input from affected children when they make decisions or develop policies that affect children. Canada actively promoted child participation in preparation for the UN General Assembly Special Session on Children in 2002, and in international development through a five-year Child Protection Strategy from 2001-2006.<sup>6</sup> Good practices in child participation are developing in some government agencies, court systems, and civil society organizations. There has been some progress, for example, in children's participation in hearings on disciplinary measures in some provincial/territorial education systems, and in certain child welfare and custody processes. Expansion of good practices in child participation is needed to make it a systematic part of all decision-making processes that affect children.

In 2010, the Supreme Court of the Yukon ruled that all children have the right to be heard in custody cases, setting an important precedent in use of the Convention to guide the interpretation of Canadian law.<sup>7</sup> This decision should be applied in all Canadian jurisdictions.

A first step toward effective child participation is expanding awareness about the rights of children and how they can be implemented in different contexts.<sup>8</sup> Polls continue to show that between two-thirds and three-quarters of young people do not know what their rights are or how to exercise them. Lack of knowledge and misunderstandings about the meaning of children's rights among adults have fostered resistance to children's rights, including child participation.

## RECOMMENDATIONS

ACTION	ACTORS (Lead and Main Actors)
<b>Continue to develop and share good practices in age-appropriate child participation.</b>	Civil society organizations Government agencies that provide services for children
<b>Adopt a law that makes consideration of the views of the child a requirement for all official decision-making processes that involve children, such as custody cases, child welfare case management, juvenile justice, immigration, and other judicial and quasi-judicial processes.</b>	Justice Canada Parliament of Canada Provincial/territorial legislatures
<b>Facilitate the participation of children in all policy formation processes that impact children. Make this a high priority for the office of a National Children's Advocate.</b>	Government departments responsible for policies that affect children National and provincial/territorial offices of children's advocates

## B GOVERNING FOR CHILDREN: GENERAL MEASURES OF IMPLEMENTATION

### Introduction

Good governance for children means establishing permanent mechanisms that focus attention on the obligation to give priority consideration to children in all decisions that affect them. The term 'general measures' refers to these basic tools for implementing all the provisions of the Convention, such as law reform, data collection, and systems for monitoring progress. Ensuring that effective general measures are in place must be a high priority for all countries.

The UNICEF Innocenti Research Center is undertaking detailed research on the general measures that different countries are using to implement children's rights. A research report on Canada, published in August 2009, is entitled *Not There Yet: Canada's Implementation of the General Measures of the Convention on the Rights of the Child*.<sup>9</sup> It is available on the websites of the Canadian Coalition for the Rights of Children (CCRC) and UNICEF Canada. Below are key findings that are still relevant at the time of this report, with suggestions for action proposed by the CCRC.

## Law Reform

Laws that protect and fulfill children's rights are essential for effective implementation. Some specific federal child protection laws have been strengthened in recent years. These include increased penalties for sexual exploitation and child pornography, an increase in the age of consent for sexual activity from 14 to 16, and increased penalties for child trafficking.

There is, however, no comprehensive law or policy for children. Canada has not taken steps to make the Convention or its core principles part of Canadian law. Furthermore, Canada has not undertaken a review of its legislation for compliance with the Convention since the ratification process two decades ago. Children are invisible in Canada's constitution, including the *Charter of Rights and Freedoms*. In some cases, courts have considered the Convention in their interpretation of Canadian laws, but in other cases Canadian courts have made decisions inconsistent with the Convention. These are discussed in the relevant thematic chapters of this report.

Sometimes government officials argue that incorporating the Convention into Canadian law is not necessary because Canada already complies through existing policies. On other occasions, incorporation is rejected because it would require too many changes in existing laws and policies. These inconsistent responses to the suggestion of incorporation illustrate the need for greater clarity in the relationship between the Convention and Canadian law.

National legal recognition of the rights of children is especially important in Canada, to provide a common framework for policies that affect children under provincial/territorial jurisdiction. It is frequently assumed that the *Charter of Rights and Freedoms* covers all human rights, but it does not adequately address the rights of children, some of which are different than those of adults. The Charter was adopted before ratification of the Convention.

The absence of clear legal status for the rights of children contributes to inequitable treatment of children across the country, gaps in implementation, and severely limited means for children to seek redress when their rights are not respected. Many of these inequities and gaps are addressed within this report.

## RECOMMENDATIONS

ACTION	ACTORS (Lead and Main Actors)
<b>Adopt enabling legislation to make the Convention part of Canadian law, and set out a ten-year plan to review and revise federal and provincial/territorial laws to comply with the Convention.</b>	Justice Canada Parliament of Canada



## Child Impact Assessments

It is essential to consider the impacts of proposed policy changes for children before adopting them. In 2007, a Senate report on children's rights, *Children: The Silenced Citizens*, recommended that the federal government use child impact assessments of proposed policies and laws as a tool to implement the Convention. This was also a recommendation to Canada by the UN Committee on the Rights of the Child in Canada's second review of Convention implementation.

In response to the Senate report, the government claimed that the current policy development process is adequate. It includes a minimal check for violations of all international human rights obligations. It does not include an assessment of how policies contribute to or detract from the fulfillment of child-specific obligations. A number of bills that have gone through the current process clearly violate the principles and provisions of the Convention, including a proposed change in citizenship law that had to be scrapped after the public voiced concern that it violated the rights of children. Requests for disclosure of the assessment of child care and juvenile justice policy changes that appear to violate the Convention have been denied.

### RECOMMENDATIONS

ACTION	ACTORS (Lead and Main Actors)
<p><b>Ensure that a child impact assessment is done for each proposed law or policy that affects children. Table the assessment in the relevant legislature to ensure transparency and accountability for children's rights.</b></p>	<p>Leaders of governments at all levels Government departments responsible for policies that affect children</p>

## Data on Children in Canada

There has been an increase in reported data on the health of children in recent years. Early reporting under the 2000 Early Childhood Development Agreement showed the potential to track and report the outcomes of public expenditures for children in certain policy areas. However, there are major gaps in data collection and analysis of the situation of children across Canada.

Policy decisions are made without accurate assessment of needs and without sufficient quantitative and qualitative evidence. More analysis of available data is needed, including comparative studies of the varied situations of children across the country.

### RECOMMENDATIONS

ACTION	ACTORS (Lead and Main Actors)
<p><b>Identify data on the actual situation of children that is already available and determine gaps that exist at federal and provincial/territorial levels. Develop mechanisms for regular collection and reporting of comprehensive and relevant data on children in Canada. The data should be reported to all parties, and should include child-friendly data for use by young people.</b></p>	<p>Statistics Canada, in cooperation with provincial/territorial statisticians and civil society organizations</p>
<p><b>Undertake research that compares the situation of children across the country, to encourage the expansion of good practices.</b></p>	<p>Public Health Agency of Canada Human Resources Development Canada Statistics Canada</p>

## Transparent Budgeting for Children

All governments in Canada claim to spend significant resources on children, but there is no way to accurately track the actual amounts spent and the outcomes of these expenditures. This is especially true of transfers from the federal government to provincial/territorial governments under fiscal transfer agreements. An example of lack of transparency in budgeting was the federal government's failure to inform the public about the difference in impact of the Universal Child Care Benefit, the Child Tax Credit, and sports and arts education tax credits for children in poor families and children in more affluent families.

### RECOMMENDATIONS

ACTION	ACTORS (Lead and Main Actors)
<p><b>Analyze and publicly disclose the annual federal expenditures for children and the impact of each budget on children. The disclosure should include fiscal transfers and comparative analysis of the impact of major policy initiatives on different groups of children, to help ensure equitable treatment of all children across Canada.</b></p>	<p>Parliamentary Budget Office Department of Finance Canada Auditor General</p>
<p><b>Expand the existing database on expenditures for early childhood development to include all expenditures for all ages of children. The database should be public, track both allocation and final use of all public funds designated for children, and be easy for young people to use.</b></p>	<p>Public Health Agency of Canada Human Resources Development Canada Finance Canada</p>

## Monitoring and Reporting

Canada's combined *Third and Fourth Reports* on implementation of the Convention was released on November 20, 2009. This was almost a year late. It reports on specific initiatives governments have taken, but it does not provide an analysis of their impact on the situation of children in Canada. It does not explain how Canada responded to the recommendations by the UN Committee on the Rights of the Child from the second review in 2003. The only input from civil society was an early identification of topics to be addressed; there was no further consultation on the substance of the report. The current process does not meet the standards for reporting laid out in the Convention and is inadequate for the measurement of progress for children in Canada.

In 2007, the CCRC proposed a continuous learning approach to monitoring and reporting that would involve all stakeholders in evaluating results, modifying strategies, and reporting on a regular basis. This approach would increase cooperative action and reduce the impulse of governments to report only good news and avoid challenging issues facing children in Canada. It would also provide public accountability.

In 2009, Canada underwent a Universal Periodic Review of its human rights record at the UN Human Rights Council. Outcomes of this process included a government commitment to improve implementation of international human rights obligations, transparency of reporting, and engagement with civil society. Senate and House of Commons committees have called for improvements as well. To date there has been no change. The process leading up to and following Canada's third review before the UN Committee on the Rights of the Child provides an opportunity for improvement.

### RECOMMENDATIONS

#### ACTION

#### ACTORS (Lead and Main Actors)

**Use the review process for Canada's *Third and Fourth Reports* to demonstrate Canada's commitment to improving its approach to monitoring and reporting on children's rights. Update Canada's report to include the following:**

- A more realistic analysis of the situation of children in Canada
- A response to previous recommendations
- Specific targets for improvement
- A plan for regular, accessible and meaningful public reports.

Canadian Heritage and Continuing Committee of Officials on Human Rights

**Establish a follow up process for the *Third and Fourth Reports*, including the following:**

- A timely, public response to the Concluding Observations
- The tabling of reports in parliament
- Engagement with children and civil society regarding follow-up plans
- A periodic review of progress in implementation of them.

Canadian Heritage and Continuing Committee of Officials on Human Rights

## National Children's Advocate

Countries that have established independent offices with mandates to ensure that children's issues and views are considered at the national level are making progress in the implementation of children's rights and see the benefits for children. Canadian provinces that have formal children's advocates report positive results, particularly where those offices have a mandate consistent with the Paris Principles for Independent Human Rights Institutions and the criteria established by the UN Committee on the Rights of the Child. The Canadian Council of Child and Youth Advocates supports the establishment of a national office to address matters under federal jurisdiction, resolve gaps for children that occur as a result of federalism, and facilitate better coordination between all stakeholders who affect conditions for children in Canada.

In 2009, a private members bill to establish a National Children's Commissioner was introduced in the House of Commons, but it died when the election was called. Cooperation by all parties is needed to make this a higher priority in parliament. There is broad support from civil society organizations that work with children across Canada. Significant research has been done on a potential mandate.

### RECOMMENDATIONS

#### ACTION

#### ACTORS (Lead and Main Actors)

**Establish an independent National Children's Advocate with a clear, strong mandate based on the Convention and guided by both the General Comments on the Convention and the Paris Principles for Independent Human Rights Institutions. The mandate should include the following:**

- Ensure that children's issues and views are considered at the national level
- Advocate for and monitoring implementation of the Convention in areas under federal jurisdiction
- Develop and implementing an appeal mechanism to address specific issues raised by children
- Facilitate coordination between federal and provincial/territorial governments in areas that affect children's rights across Canada.

Parliament of Canada

**Specifically mandate a National Children's Advocate to address matters under federal jurisdiction, including:**

- Aboriginal children
- Children in the immigration and refugee systems
- Other areas of federal legislation and policy
- Equitable treatment of all children under the *Charter of Rights and Freedoms*.

Parliament of Canada

**Ensure that every province/territory has an advocate for children with a strong mandate, and that all children have access to an effective mechanism to review and investigate evidence of violations of their rights.**

Provincial/territorial legislatures

## National Plan of Action

Canada developed a National Plan of Action after the UN General Assembly's Special Session on Children, entitled *A Canada Fit for Children*. While the plan reflects the comprehensive approach of *A World Fit for Children*, it contains no targets, no budget, no mechanisms for accountability, and weak links to concrete provisions of the Convention. The commitment to it has been subject to electoral changes in the executive offices of government. Currently, it has little discernable impact on government decisions.

Instead of calling for another national plan, the CCRC prefers to focus on strengthening mechanisms for direct implementation of the specific provisions in the Convention, as described above.

## C ACTIONS ON PREVIOUS RECOMMENDATIONS FOR CANADA: A TABLE OF PROGRESS SINCE THE SECOND REVIEW

### Introduction

In 2003, Canada received 45 recommendations from the UN Committee on the Rights of the Child to improve implementation of children's rights in Canada. These are the Concluding Observations after the second review of Canada's performance as a signatory to the Convention on the Rights of the Child. In 2007, the CCRC distributed fact sheets that grouped the recommendations under 10 areas for action and called on government bodies to seriously address these concerns.

Canada's combined *Third and Fourth Reports* on progress in implementing the Convention, released in November 2009, states that the key issues addressed are based on the 2003 review, but the report responds to only a few of the 45 recommendations. The systemic recommendations are largely ignored, while reported actions on specific matters reveal partial and inadequate responses.

The table below provides an overview of progress on the 2003 recommendations. More detailed analysis of specific issues is contained in the relevant thematic sections of this report.

### Significant Progress on Implementation

SUBJECT MATTER	2003 RECOMMENDATION (SUMMARY)	ACTION TAKEN	NEXT STEPS
<b>Ratification of Optional Protocols (OP)</b>	Ratify OP on Sexual Exploitation. (para. 60)	Ratified in 2005. First report filed in 2008. (See CCRC report on OP.)	Develop a comprehensive national strategy with focus on prevention.
<b>Youth Suicide – Adolescent Health</b>	Study causes and take steps to reduce youth suicide. (para. 37)	National Aboriginal Youth Suicide Prevention Strategy started in 2005 – \$65 million for five years. National mental health strategy also includes plans to reduce youth suicide rates.	Implementation and funding for youth component of national mental health strategy.



## Partial/Inadequate Response

SUBJECT MATTER	2003 RECOMMENDATION (SUMMARY)	REPORTED ACTION	MISSING ACTION	NEXT STEPS
<b>National Action Plan (NAP)</b>	Develop NAP with targets, timelines, resources, and systemic monitoring to ensure effectiveness. (para. 13)	NAP adopted in 2004.	NAP lacks basic elements, such as “clear division of responsibilities, clear priorities, timetables, resource allocation, and systematic monitoring.”	Make the Convention part of Canadian law with a 10-year strategy to make other laws and policies consistent with it.
<b>Federal/ Provincial/ Territorial Coordination</b>	Establish stronger coordination and monitoring to decrease or eliminate disparity in implementation of Convention. (para.11)	Federal Interdepartmental Working Group on Children’s Rights was established in 2007. Nine inter-governmental taskforces exchange information on specific issues.	Continued fragmentation and disparity. No change at senior levels with authority to take action. No progress in monitoring or public reporting.	Undertake major reform of system for implementation and monitoring children’s rights. Include Convention compliance in renewal of Canada Social Transfer in 2014.
<b>Child Poverty</b>	Eliminate discrimination in national child benefit system (para. 17) and “ensure all families have adequate resources” – with special attention to single mothers and vulnerable groups.” (para. 43)	Number of children in low-income families decreased in 2004.	Changes in 2006 and 2007 introduced discriminatory elements into the national child benefits program. Child poverty became worse during recession – no action to protect vulnerable.	Immediately improve national child benefit program. Develop national poverty reduction strategy with child-specific components.
<b>Early Childhood</b>	Undertake comparative cross-country analysis of child care and implement coordinated approach to ensure quality care is available to all children. (para. 39)	Various research studies are cited in Canada’s report.	No analysis. Comparative analysis would reveal disparities and discriminatory impacts of changes introduced since 2003.	Adopt and implement a National Early Childhood Development Strategy.

SUBJECT MATTER	2003 RECOMMENDATION (SUMMARY)	REPORTED ACTION	MISSING ACTION	NEXT STEPS
<b>Aboriginal Children</b>	Address gap in life chances between Aboriginal and non-Aboriginal children. (para. 59) (Other references to indigenous children in right to health, education, housing.)	Several specific initiatives are reported in health care and education for Aboriginal children.	Gap continues. No systemic analysis is provided and no strategy to address it.	Appoint National Children’s Advocate with a specific, strong mandate to promote and protect rights of Aboriginal children.
<b>Sexual Exploitation</b>	Increase protection and assistance to victims, including prevention and reintegration. (para. 53)	Laws passed to increase penalties, establish minimum sentences for some offences, and raise the age of consent to 16.	Low conviction rate. No national strategy. Little progress in prevention and program cuts in services for youth at risk.	Develop national strategy focused on prevention; provide support for victims to increase conviction rate.
<b>Homeless-ness/ Street Children</b>	Assess causes and develop comprehensive strategy for homeless children. (para. 55)	Research studies and specific housing initiatives are reported.	No clear analysis or comprehensive strategy. No avenues for families and children to pursue right to housing.	Develop a rights-based national housing strategy.
<b>Awareness of Children’s Rights</b>	Ensure rights education in school curricula (para. 45). Stimulate public debate on reports. (para. 61)	Small awareness initiatives funded.	No engagement with Council of Ministers of Education on rights education. Decrease in funds for human rights education.	Demonstrate national leadership to include rights education in school curricula for every child.
<b>Refugees/ Immigration</b>	Establish national policy on separated children – appoint guardians. Detain only as a last resort. Ensure access to basic services for all children. Expedite family reunification. (para. 47)	New policy on guardians. More training. 2002 law requires best interests to be considered in four situations.	No national strategy for separated children. Frequent detentions. Unnecessary delays in family reunification.	Fully implement 2003 recommendations.

## Rejected or Ignored Recommendations

SUBJECT MATTER	2003 RECOMMENDATION (SUMMARY)	COMMENTARY	NEXT STEPS
<b>Voice for Children at National Level</b>	Establish an Ombudsperson's Office for Children's Rights. (para. 15)	Support by Senate Committee, petitions, and private member's bill - rejected by government.	Appoint independent national advocate with strong mandate, to work with provincial/territorial advocates.
<b>Children's Budget</b>	Prioritize children in budget. Identify amounts and proportion spent on children. Evaluate impact, and prevent disproportionate impact of economic changes. (para. 18)	Program amounts are reported without analysis under article 4. No Child impact assessment in budget process.	Undertake child impact assessment in budget process and ensure transparency in allocation of resources that affect children.
<b>Data on Status of Children</b>	Undertake systematic analysis of data on children, including vulnerable groups, as basis for policy and programming. (para. 20) (Repeated recommendation from first review.)	No improvement in quality or analysis of data in combined <i>Third and Fourth Reports</i> . Changes in national census will weaken reliability of data at Statistics Canada.	Develop coordinated national/provincial/municipal strategy for child rights based indicators and data collection, in collaboration with civil society.
<b>Non-discrimination</b>	Include non-discrimination in legislation affecting children. (para. 22) Investigate evidence of discriminatory impact of policies for some groups of children. (Several recommendations.)	No investigations were done. Provincial jurisdiction used as rationale. Reporting limited to education efforts on respect for cultural diversity.	Undertake serious effort to implement 2003 recommendation. Include Convention compliance in federal/provincial/territorial funding agreements.
<b>Child Labour and ILO 138</b>	Assess the extent of children working. Ratify ILO 138 on minimum age of employment.	No mention in combined <i>Third and Fourth Reports</i> , despite federal awareness of changes in some provinces that impact children's rights.	Put minimum age of employment on agenda of next meeting of federal/provincial/territorial ministers of labour.

SUBJECT MATTER	2003 RECOMMENDATION (SUMMARY)	COMMENTARY	NEXT STEPS
<b>Protection from Violence</b>	Remove defence for use of force to discipline children in the law and prohibit all forms of violence against children. (para. 33)	Deliberate Rejection. Retention of Section 43 of the Criminal Code is justified to protect parents, despite scientific evidence about harm of physical punishment and more effective alternatives. No national strategy to prevent violence against children; new initiative limited to violence in sport.	Develop national strategy to prevent violence against children, as part of a national strategy to implement the Convention. Broaden scope of injury prevention strategy to include injury resulting from maltreatment.
<b>Quality of Education</b>	Improve quality of education to achieve article 29, with special attention to specified groups of children.	No national leadership to protect children's rights to and in education. Disparity between provinces with regard to article 29.	Provide leadership on rights education and good practices through Council of Ministers of Education.
<b>Reservations on articles 21 and 37c</b>	Remove reservations to articles 21 and 37.	Report states no action on 37c. Bill C-4 includes prohibition of detention with adults that would allow removal of reservation. Reservation on section 21 justified as request of Aboriginal groups.	Develop clear plan with specific steps to achieve removal of reservations.

## D AWARENESS OF CHILDREN'S RIGHTS IN CANADA

### Introduction

Awareness of children's rights and what they mean in practice is essential for implementation of the Convention, especially participation rights. This remains a major challenge in Canada.

*Young people said a key concern for them is that "most children and adults are not aware of children's rights." They want posters of the Convention in all classrooms, community centres and youth based programs and want children's rights taught in schools.*

CCRC Youth Consultation, September 24, 2011

There is little knowledge about children's rights among children and adults in Canada. Twenty years after the Convention was adopted, polling still shows that about 75% of young people do not know how to exercise their rights and their responsibility to respect the rights of others. At the level of parents and communities, there is evidence of confusion and misunderstanding about the meaning of children's rights, which creates unnecessary obstacles for effective implementation. Typical of poll findings are those of a 2006 Ipsos-Reid Survey in the province of British Columbia. Just over half of the respondents (52%) expressed confidence that the province respects children's rights, but 75% reported no familiarity with the Convention on the Rights of the Child.

Given the lack of systematic education about children's rights in Canadian schools, it is not surprising that there is little knowledge of children's rights among Canadian children. A 2006 Environics poll commissioned by War Child Canada found that adults are more likely than children to report awareness of the Convention on the Rights of the Child – 55% compared to 33% – and that most children have not heard of the major UN international human rights treaties. The poll also found that children born outside of Canada have a higher awareness of the Convention than children born in Canada – 43% compared to 32% - but still less than 50%.

The federal government, provincial children's advocates, and non-profit agencies support a number of small projects each year to increase public awareness of children's rights. The scale of current awareness initiatives is inadequate for a large, diverse country like Canada. A more comprehensive approach to public awareness, focused education of those who make decisions that impact children, and practical training for those who work with children are essential for development of a rights-respecting culture in Canada. In 2008, attendees at a national, multi-disciplinary conference on the 'best interests of the child' highlighted the need for dialogue with cultural and religious leaders across Canada on the meaning and exercise of children's rights. More and better promotion of children's participation rights is also needed.

In recent years there has been a decrease in the use of the language of children's rights in government documents that have direct relation to the Convention, including public health reports, reports to parliament, etc. Even the combined *Third and Fourth Reports* on implementation of the Convention and the First Report on the Optional Protocol on sexual exploitation include very few references to the specific provisions of the Convention.

## Survey on Experience of Rights by Young People

A web-based national youth survey, conducted in 2008, was designed to provide a better understanding of the level of young people's awareness and experience with their rights. It was undertaken by the Children's Rights Center at Cape Breton University in cooperation with the Canadian Coalition for the Rights of Children. The survey assessed the extent to which young people in Canada experience three types of rights – provision, protection, and participation rights – in their homes, schools, and communities. Participants were asked to rate 36 statements on a scale of 1 through 7, based on the extent to which they agreed with the statement. The 36 statements included 12 statements for each of the three types of rights. The survey also included four open-ended questions about children's rights. Options were provided for youth to complete the survey online or through hard copy.

### Examples of Statements on Survey: 36 statements divided equally by setting and type

SETTING	TYPES OF RIGHTS	EXAMPLE OF STATEMENT
Home	Provision rights	To what extent do your parents and other adults in your family make sure you have your school supplies?
School	Protection rights	To what extent do your teachers and principals make your school safe from bullying and violence?
Community	Participation rights	To what extent do adults and community leaders in your neighborhood listen to the concerns of youth?

The survey received 629 usable responses from young people in Canada aged 9 to 18 years with an average age of 15.6. The majority self-identified as Caucasian, 7% as Asian-Canadian, and 5% as Aboriginal. There were insufficient numbers from special populations (e.g., children who were refugees, in the criminal justice or child welfare system) to allow analysis by status. The percentage of respondents from different geographic regions was reasonably consistent with the population distribution by provinces and territories, with the exception of Quebec. Although the survey was also in French, there were only seven respondents from Quebec.

### General Analysis of Survey Findings

Some generalizations are possible, with acknowledgement that the sample was small and not representative of all children in Canada.



First, it is very clear that respondents lack knowledge of what children's rights are. Few young people reported that they learned about rights in either home or school. The fact that children do not know what rights they have under the Convention needs to be considered in drawing further conclusions from the answers to other questions in the survey. In fact, from the comments in response to the open-ended questions, it seems that young people are more familiar with issues relating to the rights of children in the developing world (e.g., rights to food and shelter) than their own rights in Canada.

Second, respondents reported that they experienced more of their basic provision rights, such as food, housing, and education, but less of their protection rights, such as freedom from violence and exploitation. The young people report experiencing very little protection, for example, from illegal drug-pushers, or bullying. In particular, the young people do not perceive their communities to be safe places.

Third, lack of voice and lack of participation were expressed as major concerns in response to the open-ended questions. In the quantitative section, respondents reported more experience of participation rights than protection rights.

Fourth, although respondents indicated that their rights were least well respected in the community, it was apparent from the comments that disrespect of their rights in their schools is also of great concern to them.

### Insights from Specific Statements

Analysis of the responses to individual items sheds more insight into the practice of children's rights in Canada. In the home, a majority of respondents indicated that their parents always provided them with adequate clothing and food (78%) and always ensured they got to school (77%). In contrast, only 27% of parents were said to always protect their children from bullying, 31% to help when they are upset, 38% to ensure they are safe when working, and 22% to teach about drug abuse.

*"Too many kids are abused."*

A similar pattern emerged in relation to the community. Small percentages of children reported always being protected from drugs (11%), from dangerous labor practices (16%), and from predators (16%).

*"Adults are the drug pushers."*

On the positive side, a higher number of respondents reported that their communities provide opportunities for the development of skills and interests such as sports or drama (32%), medical assistance (30%), and recreational facilities (27%). These percentages are low, however, when analyzed in relation to the right of all children to development of their full potential, the right to play, and the right to health, as outlined in the Convention.

Responses to statements about respect for rights in schools indicated a high degree of available counseling (46% always), and a very low incidence of teacher yelling or bullying (2% always). Respondents were concerned, however, with lack of respect from teachers. Few of article 29's education provisions were being respected (5-11%). In addition, many students noted in their comments that schools were not rights respecting. As examples:

*"Very few teachers show respect to the students. They will never apologize for their mistakes even when the student has been wrongly punished."*

*"The teachers and administrators do not respect the rights of young people."*

### Analysis of Responses to Open-ended Questions

Analysis of the responses to the open-ended questions is helpful for the development of corrective strategies.

#### QUESTION 1

**"When you hear the term "children's rights," what comes to mind?"**

Most noticeable was the absence of any reference to the Convention on the Rights of the Child. This is consistent with other indicators of the low level of awareness of the Convention in Canada. Responses generally fell into the following three categories, arranged in descending order by frequency of response.

#### Basic Rights

In the first category were descriptors such as:

*"The right to have a home without violence" and "Food and shelter,"*

There were also references to violations of children's basic rights:

*"Children in child labor" and "things like child abuse."*

Silence about children's rights was also noted, for example:

*"Teachers aren't talking about rights in my school, which is not cool."*

#### Description of Laws

Responses in the second category indicated that the respondents were aware that there was some legislation in Canada designed to protect children, for example:

*"(laws to) protect children from adults who would hurt them."*

### Inadequate Knowledge of Rights in Canada

Finally, there were some responses that noted the lack of teaching about human rights in Canada, for example:

*“We learn about all the suffering of children in 3rd world countries, but we do not learn about the injustices present in Canada itself.”*

#### QUESTION 2

##### “What rights do you think young people in Canada have?”

Again, there was no reference to the Convention on the Rights of the Child and the rights described were basic rights such as:

*“Food and shelter” and “protection from harm.”*

The school was a prominent target of criticism:

*“My parents have taught me about my rights, but the schools are the biggest violators. When my parents attempt to defend the rights of the students, this is taken out on me by my marks dropping or the teachers ignoring me.”*

Although a few noted that youth had “too many rights,” many more commented on the lack of opportunities for youth to have voice and influence in decision making. Such comments are exemplified in the following:

*“The rights that we have right now as young people in Canada aren’t very prominent and I think that they go unnoticed, really. They should be brought out by youth by having meetings for those who are interested. Now I find that we do not have a say simply because we are seen as being immature and unreliable.”*

#### QUESTION 3

##### “Do you think young people in Canada have enough rights?”

The responses tended to fall into four categories. Participants either 1) agreed that youth have enough rights, 2) disagreed, and believed that youth did not have enough rights, 3) believed that youth had enough rights, but that these rights were either unknown or not respected, or 4) that their rights were not optimal, but they were sufficient when considering the bleak circumstances of developing countries. Of those who expressed that youth do not enjoy enough rights, an overwhelming majority mentioned a lack of youth input or voice into matters which concern them, for example:

*“I think that young people in Canada do not have enough rights because*

*everything seems to be spoken for us and not having anything to do with us.”*

The school was a primary area of concern:

*“I think the privacy and ability of young people is impaired under the claim of being helpful and keeping people safe. For example, we are not allowed to check any form of email at school and the majority of students because of the technology of high schools, rely on email to send projects and presentations to themselves. Also the school system now can hold students responsible for activities that have been partaken outside school. It’s interesting to see where boundaries are being set.”*

#### QUESTION 4

##### “Do you think adults respect the rights of young people?”

Most respondents agreed that the answer depends on the adult and the circumstances. Many young people noted that, while their own experiences have been positive, they were aware that there were young people who do not enjoy the same rights as they have experienced. In general, the responses were ambiguous and reflected a belief that the variability among adults made it difficult to say for certain whether or not a majority of adults respected the rights of youth. The school was a primary focus for comment, for example:

*“Teachers are allowed to disrespect us in many ways on a day to day basis.”*

### Summary

*“I do not hear the term (children’s rights) very much, and I think that some people may not think of it very seriously. I think that it is important, not only for the well-being of children, but hopefully, if children care about their rights, when they grow up, they will be more proactive about human rights of all sorts.”*

This statement by a 15-year-old male expresses the importance of teaching children about their rights. Canada continues to fall short on its Convention obligation to ensure that adults and children know their rights. A majority of young people do not know what rights they have or how to exercise them appropriately. Although respondents to this survey report that their basic needs are met, they do not feel protected from harm either in their homes or their communities. They report that their voices are not heard and that they do not have opportunities to participate in decisions that affect them. These general findings are similar to those found in other youth engagement exercises across Canada.

## RECOMMENDATIONS

ACTION	ACTORS (Lead and Main Actors)
<p>Implement a national communication campaign to inform the public about children’s rights under international and domestic law and cultivate a culture of respect for the rights of children. Messages should engage children, parents, professionals, policymakers, religious and multicultural leaders, media, and other groups with influence in communities.</p>	<p>Federal government in cooperation with civil society organizations</p>
<p>Develop a training program on children’s rights for parliamentarians, government officials, and professionals who serve children in health, social services, and the judicial system. The training should focus on use of the Convention in legislation and public policy, program development, advocacy, and decision-making processes.</p>	<p>Federal Inter-departmental Working Group on Children’s Rights</p>
<p>Identify and compare how the curriculum in each jurisdiction teaches children about the Convention and children’s rights. Develop ways to progressively expand inclusion of children’s rights at various levels.</p>	<p>Council of Ministers of Education</p>
<p>Expand the development and use of curriculum resources on children’s rights as well as educational initiatives that integrate knowledge and exercise of children’s rights into curricula, policies, and practices in schools.</p>	<p>Provincial/territorial departments of education, working together through Council of Ministers of Education</p>
<p>Ensure that all curricula cover the rights of children in Canada as well as issues relating to the rights of children in less developed countries</p>	<p>Provincial/territorial departments of education</p>
<p>Take a leadership role in raising public awareness of children’s rights through:</p> <ul style="list-style-type: none"> <li>• Increased references to specific provisions of the Convention in government dialogue and documents, whenever it is relevant;</li> <li>• A deliberate strategy for dissemination of outcome reports and regular monitoring reports, including child-friendly versions;</li> <li>• Incorporation of children’s rights throughout the education systems across the country;</li> <li>• Inclusion of children’s rights in training programs for those who work with children in health, social services, and justice systems;</li> <li>• Dialogue with cultural and religious leaders on the meaning and application of children’s rights at all levels of society.</li> </ul>	<p>Federal government through ministers responsible for children and Inter-departmental Working Group on Children’s Rights Council of Ministers of Education Provincial/territorial departments of family and children’s services Professional organizations</p>



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# 3 Protecting Children

## A CHILDREN’S RIGHT TO BE FREE FROM VIOLENCE

### Introduction

Children and youth endure more violence, exploitation and abuse than adults in Canada.<sup>10</sup> The high incidence of violence against children makes this a major concern in all aspects of children’s lives, with ripple impacts on their other rights, such as health and education. The Convention explicitly obligates governments to take active measures to protect children from all forms of violence (article 19). A wide range of efforts at all levels of government address various forms of violence; but, in a 2008 CCRC survey, lack of protection from violence and exploitation was identified by young people as an area where their rights are not respected, particularly in the community and in schools.<sup>11</sup> This survey and other studies indicate that the greatest sources of violence, according to children, are in the daily interactions at home between children and between children and parents, as well as between children at school, with too little adult intervention.<sup>12</sup>

In 2006, Canada adopted the report from a United Nations study on violence against children (published later as the *World Report on Violence against Children*), which included recommendations for action by all governments. The report focused on violence against children at home, in schools, in the community, and in care and justice systems.<sup>13</sup> Little has been done to implement the recommendations in Canada.

### Legal Measures

While federal /provincial/territorial laws prohibit many forms of violence, the laws are not comprehensive nor do they fully extend to children; enforcement is uneven and inadequate; and



prevention of violence receives too little attention. Prevention is the most important way to protect children from violence.

Canada has passed a number of new laws to strengthen the criminalization of sexual exploitation of children, with a particular focus on internet-based exploitation. More attention must be paid to the relationships between internet exploitation and other forms of sexual abuse, with a focus on strategies to prevent all forms of abuse. More effective education about the legal and illegal use of digital technologies is needed to avoid the unintended consequence of bringing greater numbers of children into conflict with the law.<sup>14</sup>

## Violence at Home

Rates of violence against children in the home are persistently high, evidenced by the Canadian Incidence Study of Reported Child Abuse and Neglect and by opinion surveys among children and youth. This situation requires more attention by governments at all levels. Three areas for particular attention are:

- Effective, sustained prevention programs with sufficient coverage, including programs promoting non-physical discipline
- Clear laws that prohibit all forms of violence against children
- More clear and consistent legislation and standards in provincial/territorial child welfare systems, giving priority to the best interests of the child.

## Violence in School

In schools, peer violence or bullying and physical punishment are two significant concerns. Bullying in its various forms has received significant attention in Canada. A national network of experts, called PREVNet, coordinates research into effective approaches to prevention and response. Strategies that include children, respect their rights, and ensure that adults are active and consistent in their roles are most effective, based on research findings. Such strategies emphasize prevention, participation and progressive discipline. Provincial/territorial disciplinary policies are uneven in terms of respect for the rights of children. Good, evidence-based practices in some jurisdictions should be scaled up across the country.

Recent reports have highlighted various forms of bullying and harassment experienced by young people because of their sexual orientation.<sup>15</sup> In some cases, for example, school curricula and school policies do not allow open discussion of issues relating to sexual orientation or the formation of clubs, such as gay/straight alliances that promote open dialogue. Discrimination and harassment based on sexual orientation are also experienced in other settings. Increased attention is needed to ensure that schools and public spaces in the community are safe places, without discrimination against young people based on sexual orientation.

## Violence in Sport

Violence in sport affects many children. Sports organizations have begun to address physical violence through awareness campaigns and stronger rules and penalties. Good practices in the prevention of abuse and violence in some sports should be expanded to ensure that all children are protected from violence at all levels of involvement in sports. A more active, coordinating role by governments, in cooperation with all major youth sports organizations, should result in minimum standards for player safety from all forms of violence in sport, including mental and emotional abuse.

## National Leadership

There are linkages between the various expressions of violence against children. A comprehensive national strategy would support positive action and help to co-ordinate law enforcement with prevention programs. It would promote consistency, scale up good practices, and maximize promising efforts being made in different parts of the country. It would send a clear message that ending all forms of violence against children is a high priority. National leadership would help to change current public misperceptions that some forms of bullying or violence in sport are normal and acceptable and that young people are primarily perpetrators of violence, when in fact they are more often victims of violence than perpetrators of it.

The federal government has a particular responsibility to ensure that there is equitable treatment of children across the country in relation to protection from violence. As a detailed background report for this chapter explains, children in different places in Canada experience different levels of legal protection from violence.

### RECOMMENDATIONS

#### ACTION

#### ACTORS (Lead and Main Actors)

**Develop and implement a national strategy for prevention of all forms of violence against children, as part of a national strategy to implement children’s rights. The federal government should play a leading role to ensure that all children are treated equitably in Canada with regard to their right to grow up free from violence.**

Prime Minister  
Public Health Agency of Canada, in cooperation with professional associations, civil society organizations, and all levels of government

**Adopt federal legislation to prohibit all forms of violence against children, including repeal of section 43 of the *Criminal Code*. Amend provincial/territorial laws to prohibit the use of force for correction in all settings. Invest in helping parents and other authorities use more effective forms of discipline, based on evidence-based research.**

Justice Canada  
Public Health Agency  
Provincial/territorial departments responsible for children

ACTION	ACTORS (Lead and Main Actors)
<b>Review “Safe School” legislation and strategies, anti-bullying programs, and protection laws in every province/territory to give priority to the best interests of children, including consideration of the views of young people themselves.</b>	Provincial/territorial departments responsible for children Council of Ministers of Education Provincial/territorial departments of education
<b>Provide regular training for educators, school trustees and youth leaders in rights-respecting behaviour management. Support education of children and youth on safe and legal use of digital technologies.</b>	Council of Ministers of Provincial/territorial departments of education Sport Canada
<b>Reduce violence against children in sport through a national strategy, using evidence-based education, regulation, and consistent enforcement of legal protections. The strategy should be informed by research on the impacts of violence in sport on child survival, health, and optimal development.</b>	Departments responsible for recreation in provincial/territorial and municipal governments

## B CHILDREN’S RIGHT TO BE FREE FROM POVERTY

### Introduction

One in nine children in Canada grows up without access to adequate resources for healthy development.<sup>16</sup> While the number of children living in poverty is of great concern, so too is the depth of poverty. A majority of low-income households with children live far below whatever measure is used as the poverty line. Using a multi-dimensional assessment of child poverty draws attention to important factors besides income, such as poverty of time spent with parents.<sup>17</sup> Poverty during childhood can do life-long harm. This has been documented in health research, including official government reports cited in the section on health.

Canada ranks well below other industrial countries in this area, placing 19th out of 26 in the most recent comparison by the Organization for Economic Cooperation and Development (OECD).<sup>18</sup> Eleven countries in the same category as Canada have child poverty rates of less than 10%. Countries and provinces that have set targets and implemented specific strategies to reach those targets have made progress. Canada, by comparison, has not made much progress since 1989, when parliament passed a resolution to end child poverty by 2000.

## National Child Income Security System

In 2008, the National Council of Welfare, an advisory group to the federal government, analyzed the impacts of the National Child Benefit System. This is the major government strategy to reduce child poverty. In 7 of 20 scenarios across the country, one child with a lone parent and two children with two parents in low-income households were worse off than 10 years before the National Child Benefit System was implemented. The council concluded that “the National Child Benefit System was a big step backwards in the fight against child poverty.”<sup>19</sup>

In addition, two changes made to income support programs for children in 2006 and 2007 discriminate against children in low-income households. Under the current Universal Child Care Benefit program, some children in poor families receive less, after taxes, than children in wealthy families. Under the current Child Tax Credit, children in the poorest families receive no benefit compared to children in affluent families who receive \$300. The introduction of these policies happened at a time when 12.4% of children lived in poverty, and the wealthiest 10% of households with children had ten times the level of resources as the poorest 10%. In addition, the child benefit program has become so complicated that many families do not know if they are being treated fairly or not. In 2010, a small correction was made to provide more fair tax treatment for single mothers compared to two-parent families, but the larger inequities between children were not addressed. The CCRC advocates for a fair and understandable system of support for families that ensures all children have the opportunity for a good start in life, as well as a national poverty reduction strategy.

## Maintenance Payments for Children

Statistics Canada reported that 64% of the cases in Maintenance Enforcement Programs across the country are in arrears.<sup>20</sup> Most of the 408,000 cases involve children, who need the resources for immediate basic needs. More attention to enforcing these agreements could help children at the time of life when they most need it.

## RECOMMENDATIONS

ACTION	ACTORS (Lead and Main Actors)
<b>Establish specific annual targets to reduce child poverty so that it is less than 5% by the 25th Anniversary of the Convention in 2014.</b>	Human Resources and Skills Development Canada
<b>Develop and implement a national, coordinated strategy to eliminate child poverty, in the context of a broader national poverty reduction strategy. An effective strategy will include a combination of measures, based on a multi-dimensional analysis of the conditions necessary for healthy development.</b>	Human Resources and Skills Development Canada Parliament of Canada

ACTION	ACTORS (Lead and Main Actors)
<b>Ensure equitable distribution of tax benefits and social transfers for children, including regular public accountability. Enforce maintenance payments that involve children.</b>	Human Resources and Skills Development Canada

## C CHILDREN'S RIGHT TO BE FREE FROM EXPLOITATION IN THE WORKPLACE

### Introduction

There is great variety in the minimum age of employment, allowable hours of work, regulation of conditions of work, and recourse for young workers to protect their rights.<sup>21</sup> Of particular concern are trends to lower the minimum age of employment. In British Columbia, for example, children as young as 12 can be employed part-time without a permit and with few regulations. The costs of deregulation have been an increase in workplace injuries of young people and growing concern about the impact of long working hours on educational achievement. In some jurisdictions, young people are not protected by labour laws that protect adults in the workplace. Incidents of violence and abuse in the workplace are often not formally reported or investigated.

Canada is not in compliance with the provisions of article 32 of the Convention, which require the state to protect under-18s from economic exploitation by establishing an appropriate minimum age, regulation of hours and conditions, and effective enforcement. Canada has ratified the International Labour Organization (ILO) Convention 182, which prohibits the worst forms of child labour, but not ILO Convention 138, which addresses minimum age of employment, hours, and working conditions.

In 2003, Canada was asked by the UN Committee on the Rights of the Child to research the extent of children working and then take effective measures to prevent exploitation. While there has been some further discussion about ratification of ILO Convention 138, the federal government has not taken leadership to assess the situation of working children and implement the provisions in the Convention on the Rights of the Child across the country.

*Young people said, "Kids tend to get paid less than adults do for the same work." "We've learned that girls get paid less than boys too." "For kids, it is more difficult to find a job. The only opportunities are Superstore, waiting on tables where you get less than minimum wage due to the expectation of tips. And camp counsellors: I know someone who earned \$160 for the whole summer as a counsellor." They also identified disparities in pay and conditions between provinces/territories as a concern, and recommended "more stringent regulations for wages. There should be an absolute minimum pay no matter what. There should be no age discrimination."*

CCRC Youth Consultation, October 2, 2011

## RECOMMENDATIONS

ACTION	ACTORS (Lead and Main Actors)
<b>Take leadership on compliance with the Convention through research and public reporting on the situation of working children across the country. Investigate further the ratification of ILO Convention 138 in order to counter trends to weaken child labour standards within Canada.</b>	Federal Minister of Labour Human Resources and Development Canada
<b>Establish a consistent minimum of age 16 for employment (consistent with age 16 for compulsory education), while allowing for light employment between ages 13 and 16, with appropriate safeguards on hours and working conditions.</b>	Federal Minister of Labour
<b>Develop national guidelines for the regulation of hours and conditions of work for young people that protect their health, safety, and educational participation. Monitor and report annually on the situation of working children across the country as a form of public accountability for protection of the rights of children.</b>	Federal Minister of Labour Statistics Canada
<b>Use federal/provincial labour agreements to support training for employers and young people on workplace safety and the rights of young workers, including enforcement of protective regulations, respect for rights, and access to appropriate mechanisms for young people to report and resolve complaints about violence, abuse, and exploitation in the workplace.</b>	Industry Canada Federal Minister of Labour Provincial/territorial departments of labour Human Resources and Development Canada



# D CHILDREN'S RIGHT TO BE FREE FROM SEXUAL EXPLOITATION

## Introduction

This is the first review of Canada's implementation of the Optional Protocol to the Convention on the Rights of Child on the Sale of Children, Child Prostitution, and Child Pornography (OPSC). Specific attention will focus on the systems that have been put in place for implementation, such as legal reform and national strategies to achieve the desired outcome of OPSC. Below are summary points for consideration, which are based on a comprehensive research project undertaken in 2009-2010.<sup>22</sup>

*Young people said important concerns are that there is "not enough awareness of rape and sexual abuse" or of "repercussions of the implications of child pornography and 'sexting.' There are "not enough clinics – mental health and physical health – with trained professionals in small cities." Young people want "affordable help for after sexual assault (counselling)...[and] rehabilitation for drug abuse." They ask for "more consequences for sexual offenders."*

CCRC Youth Consultation, September 24, 2011

## Articles 1 – 3, 8: Legal Protection and Enforcement

Canada has specific laws to prohibit the range of activities covered in articles 1 to 3 of the OPSC, at both the federal and provincial levels of government. In recent years, steps have been taken to expand the laws to include internet exploitation, to raise the age for consensual sexual activity to 16, to require Internet service providers to cooperate with law enforcement of child abuse, and to increase the penalties for child pornography and trafficking of children.

Enforcement of these laws needs increased attention. As outlined in the government report, there are few prosecutions, compared to estimates of the number of violations and complaints. Furthermore, only an estimated 50% of prosecutions lead to convictions of a small number of persons. An essential element of effective enforcement is support for child victims who serve as witnesses in criminal prosecutions. As one example, good practices in a program in Edmonton have demonstrated an increase in conviction rates from 25% to 75%.

A second area for legal reform is stronger legal protection for all the rights of children under the Convention, as a tool for preventing exploitation.

## RECOMMENDATIONS

### ACTION

### ACTORS (Lead and Main Actors)

**Enforce existing laws more effectively and consistently through a national strategy that includes prevention and protection of child victims and witnesses in criminal prosecutions.**

Justice Canada  
Public Safety Canada

**Incorporate the Convention into domestic law to strengthen the legal framework for the prevention of child exploitation.**

Justice Canada

## Articles 4, 5, 6: Cross-Border Exploitation and Trafficking

Canada is a source, transit and destination country for the trafficking of children and cross-border sexual exploitation. Borders include provincial/territorial borders within Canada as well as national borders in the case of transnational exploitation. Soon after adoption of the OPSC, Canada passed legislation to permit prosecution for extraterritorial offences. Enforcement has been weak, with only a few prosecutions, while there is evidence of significantly more cases where it could apply. There are also concerns from other countries about the lack of cooperation by Canada in international investigations.

*Young people say they "need information about all aspects of sexual well-being, including sexual exploitation and assault, instead of just being focused on sexual health...to understand what sexual exploitation is and where to draw the line. Many girls don't know that what happened was assault or exploitation and they don't talk to anyone about it."*

CCRC Youth Consultation, August 24th, 2011

The government's first report on its implementation of OPSC lists a number of specific initiatives and various intergovernmental and international working groups on very specific aspects of the OPSC. However, Canada lacks a national strategy that would link all the pieces, fill gaps, and ensure a robust approach to prevention, protection of victims, and prosecution of offenders. Without a comprehensive strategy, efforts in one geographic area shift the problem to another one, in what is known as the 'pushdown - pop-up' pattern of sexual exploitation.

The Interdepartmental Working Group on Trafficking in Persons was mandated in 2004 to develop a national strategy but has yet to do so.<sup>23</sup> Current approaches to trafficking do not include specific attention to children.

## RECOMMENDATIONS

ACTION	ACTORS (Lead and Main Actors)
<p><b>Develop and implement a comprehensive, national strategy that links prevention, protection of victims, and prosecution of offenders across the country and internationally. Close the gaps between existing small-scale initiatives and establish stronger, on-going cooperation between government agencies at the federal/ provincial/territorial levels, youth-led groups, and civil society groups who work with children.</b></p>	<p>Federal Interdepartmental Working Group on Children's Rights Provincial/territorial ministers of justice and departments responsible for children's policy Youth-led groups Child-serving agencies</p>
<p><b>Emphasize child protection, including prevention of sexual exploitation, in corporate social responsibility laws and policies through joint initiatives between government, the private sector, and civil society groups. Special attention is needed in the following sectors: tourism, travel, communication, media, Internet services, advertising and entertainment, agriculture, and financial services.</b></p>	<p>Private sector business associations Departments of industry at federal/ provincial/territorial levels</p>
<p><b>Include explicit child protection provisions in human resource policies at all levels, such as professional codes of conduct and legislation governing professions and labour.</b></p>	<p>Human resource management directors Business and professional associations</p>

### Article 9: Vulnerable Children

Evidence presented to a parliamentary study committee in 2006 suggested that the average age for a first experience of prostitution was between 14 and 18 years of age.<sup>24</sup> The age of eligibility for protective services under child welfare varies significantly across Canada, and migrant children and unaccompanied minors do not qualify for welfare services at all in some provinces. Lack of access to child welfare leaves some young people particularly vulnerable for exploitation during this at-risk period. Adolescents and service agencies report uneven availability and range of services for that age group, leaving gaps that further increase vulnerability. There is substantial evidence that child welfare services for Aboriginal children are not funded equitably and the increased vulnerability of Aboriginal children is reflected in the over-representation of Aboriginal young people in sexual exploitation.

In addition, there is inadequate protection for young people who are sent out of Canada for the purpose of marriage below the legal age and/or to which they have not consented. Children living in or brought to closed religious communities, such as the polygamous community in Bountiful, British Columbia, have few avenues to protect their rights. In this community, forced marriages of young girls to older men have been documented, along with the maltreatment of young males.

## RECOMMENDATIONS

ACTION	ACTORS (Lead and Main Actors)
<p><b>Ensure that all children under age 18 can access supportive services under child welfare, if needed, in keeping with the principle of the 'best interests of the child'.</b></p>	<p>Provincial/territorial departments of social services</p>
<p><b>Provide more resources for adolescent programs that demonstrate effectiveness in preventing sexual exploitation.</b></p>	<p>Government departments responsible for social development at all levels</p>
<p><b>Provide special assistance for young people sent out of the country or brought into the country for the purposes of forced marriage or other forms of sexual exploitation.</b></p>	<p>Federal and provincial departments responsible for immigration and settlement</p>
<p><b>Provide the necessary resources for Aboriginal preventive programs to reduce the vulnerability of Aboriginal young people.</b></p>	<p>Aboriginal Affairs and Northern Development Public Health Agency Canada</p>



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*One young person said, “A friend was raped by her boyfriend. She didn’t tell her parents but her doctor did and her parents kicked her out. She had to have baby by herself, the guy was gone. She didn’t have anywhere to turn to.”*

CCRC Youth Consultation, August 24th, 2011

## Article 10: International Cooperation

When Canada ratified OPSC, the Canadian International Development Agency (CIDA) had a five-year Child Protection Strategy that included a focus on strengthening children’s rights and preventing sexual exploitation, child labour, and use of children in armed conflict. That strategy has not been renewed. A new Children and Youth Strategy within CIDA has ‘safety and security’ as one of its three pillars, along with health and education. Safety in schools is one specific priority in the safety pillar. However, it is not clear how much focus will be put on prevention of sexual exploitation.

### RECOMMENDATIONS

ACTION	ACTORS (Lead and Main Actors)
<p><b>Include implementation of article 10 of OPSC in CIDA’s Child and Youth Strategy and provide a supplementary report to the UN Committee on the Rights of the Child on how CIDA’s new strategy implements OPSC.</b></p>	<p>Canadian International Development Agency</p>

*“If you’re a student, your teacher should talk about it more and get some really engaging teachers to help students talk about it in class. My elementary school was really good at that. When we did ‘sex ed’ we would separate guys and girls and ask whatever questions we wanted. The teachers were about 27 years old and really good with us. Would be cool to do that in high school.”*

CCRC Youth Consultation, August 24th, 2011



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# 4 Enabling Children’s Full Development

## A CHILDREN’S RIGHT TO HEALTHY LIVING CONDITIONS AND HEALTH CARE

### Introduction

Implementing article 24 of the Convention is an urgent matter for children’s health in Canada and for the country’s future, as well as fulfilling children’s rights. Article 24 includes healthy living conditions as well as access to health care. In Canada, implementing article 24 can provide a useful balance for an over-emphasis on clinical medicine in our public health system.

Fulfilling article 24 also makes good economic sense. Current public debate is focused on lagging productivity and an aging population. One of the best solutions is to invest in children’s health. Mastery of the skills required for economic success builds on early foundations.<sup>25</sup> Health research clearly documents a direct relationship between childhood conditions, brain development, and skill formation. In reverse, brain damage and stunted development from unhealthy conditions during childhood can be irreversible, and it adds tremendous costs in health care and social services, as well as lost productivity.

An expanding field of research, known as the social determinants of health, provides scientific evidence for what are essential components of healthy conditions for children. Nutrition, housing, family dynamics, socioeconomic status, quality of neighbourhood, community services, and environmental factors are examples of the components of healthy conditions for child development.

We know the life-long positive impacts of providing healthy conditions for child development; we know the negative impacts and economic costs of failing to do so. There is a remarkable consensus in the



medical research, academic research, NGO research, and government reports on what the priorities are for improving the health of children in Canada. The puzzling question is why so much knowledge and awareness of the benefits for all Canadians has resulted in little improvement since the second review. Taking action on what we know has been much too slow.

Rather than repeat the analysis, this report references key documents from various sources, lists the key issues, and focuses on the transition from knowledge to action. The primary challenge in Canada is that the extensive knowledge about children’s health is not being translated into the policies and programs that could make a big difference.

### Recent Reports on the Status of Children’s Health in Canada

Date	Authority	Name of Report	Summary and Importance
2006	<b>Council of Ministers of Health</b>	<i>Their Future is Now: Healthy Choices for Canada’s Children and Youth.</i> <sup>27</sup>	A comprehensive strategy for child health, based on documented evidence and established national health goals.
2009	<b>Chief Public Health Officer of Canada</b>	<i>Growing Up Well – Priorities for a Healthy Future.</i> <sup>28</sup>	State of child health from birth to age 11. Confirmation of the priorities named in the 2006 report by the Council of Ministers of Health. Absence of a clear plan of action.
2009	<b>Canadian Paediatric Society</b>	<i>Are We Doing Enough? A Status Report on Canadian Public Policy and Child and Youth Health.</i> <sup>29</sup>	Analysis of health disparities between Canadian children and how they can be reduced through public policies and programs.
2010	<b>Dr. D. Raphael (Academic Community)</b>	<i>The Health of Canada’s Children: A Four-Part Series.</i> <sup>30</sup>	Summary of academic research, international comparison, and analysis of context for change.
2010	<b>Healthcare Quarterly</b>	<i>Child Health in Canada –series of four issues</i> <sup>31</sup>	First issue, October 2010, focuses on social determinants of health and policy implications. Other issues will focus on mental health, health system performance, and innovation.

### Priority Areas of Concern

- 1. Health inequities and socioeconomic conditions.** Conditions such as poverty, inadequate nutrition, and poor housing are identified as top priorities for action in all the research reports. While most Canadian children live in healthful conditions, 12% live in unhealthy poverty, 13% live in unhealthy housing, and over 38% of food bank users in March 2010 were children who lack food security and adequate nutrition. Canada’s Chief Public Health Officer has recognized that family income correlates with 80% of the key factors in healthy child development.
- 2. Early childhood development.** The focus on custodial daycare for working parents instead of early childhood development has had disastrous effects for young children in Canada. (See section on Early Childhood Development and Care.)

- 3. Preventing abuse and neglect.** Reported maltreatment is unacceptably high. A national database on reported cases of child abuse indicates that the rate of investigations in 2008 (39.16 per 1,000 children) is similar to what it was in 2003 (38.33 per 1,000 children.)<sup>32</sup> Research indicates that most maltreatment is not officially reported. Child maltreatment has profound and enduring effects into adult life.<sup>33</sup> (See section on Violence.)
- 4. Mental health services.** It is estimated that 15% of children and youth are affected by mental health issues at any given time. Many mental health problems start before the age of 18. Early attention would benefit young people for a lifetime. A national mental health strategy with separate attention to children is under development, but implementation and funding will be a challenge.
- 5. Promotion of healthy living.** Physical exercise, nutritional food choices, prevention of bullying, safe play spaces, and appropriate Internet use are receiving some attention. Effective strategies are needed to help young people make healthier consumer choices (e.g. strategies to deal with the marketing of violent video games and junk food to young people). The benefits of targeted initiatives in these areas would be greater if they were part of a more comprehensive strategy.
- 6. Injury prevention.** A national childhood injury prevention strategy was announced in 2009, but was later reduced to sports injury prevention. This ignores other causes of most childhood injuries, such as accidents and maltreatment. The CCRC advocated for a comprehensive approach that would include maltreatment and focus on preventing all forms of injury.

### Canada’s Record by International Comparison

A children’s rights lens offers an international window of comparison to inform Canadian debate. In recent comparisons of child health, Canada is falling behind many other industrialized countries with similar or fewer economic resources. The following rankings among industrialized countries are of particular concern:<sup>34</sup>

- Infant Mortality – 24th of 30 countries
- Health and Safety – 22nd of 30 countries
- Child Poverty – 20th of 30 countries
- Children’s Well-being – Middle rank of 21 countries (Canada’s rating varies for 6 dimensions reviewed in a UNICEF comparative study.)
- Early Childhood – Last of 20 countries for access and level of public investments (OECD study) and last of 25 countries in a UNICEF comparison of 10 benchmarks. (See section on early childhood.)
- Inequality in Child Well-being – Average overall; higher in educational equality, lower in material equality, average in health equality<sup>35</sup>

### Factors that Affect Implementation of Children’s Right to Health

- An aging population shifts the focus in health policy from children.
- Health research on the benefits of preventive measures has not been accompanied by allocation of resources for preventive programming.
- Responsibility for policies affecting children’s health is fragmented between different government departments. One impact is that the most vulnerable groups, such as Aboriginal children, often fall through the cracks.

- Fiscal restraint has resulted in less funding for public community services that benefit all children and help to reduce disparities between children.
- Children are still not viewed as full citizens with equal rights.
- There is no coherent family policy or child policy at the national level or in most provinces.

## RECOMMENDATIONS

ACTION	ACTORS (Lead and Main Actors)
<b>Shift from narrow, discreet interventions to treat children as whole persons in the formulation of health policy and programming.</b>	All health care providers and policy analysts
<b>Approach children’s health as an investment in developing the human capital Canada will need to address the economic impact of an aging population, basing policies on the scientific evidence that shows the benefits for all Canadians.</b>	Federal Cabinet Priorities Committee
<b>Allocate resources for preventive measures based on the findings in the growing body of research on the social determinants of health. Such measures include income security, affordable quality housing for families, and early childhood care and development.</b>	Federal/provincial/territorial departments of health and social development
<b>Shift the focus from individual cases to greater support for community services that benefit all children. Reduce the gap between the most advantaged and least advantaged children.</b>	Health care providers and policy analysts at all levels of government
<b>Establish a mechanism to investigate and address evidence of inequitable access to health care for vulnerable groups, such as children with disabilities, Aboriginal children, newly arrived immigrant children, and children in remote communities, as recommended by the UN Committee on the Rights of the Child in Canada’s second review.</b>	Health Canada Council of Ministers of Health
<b>Invest in research that rigorously addresses which early child and family community initiatives optimize Early Development Instrument (EDI) scores and longer-term academic and social success for any given cohort of children.</b>	Institute for Health Research Public Health Agency of Canada

*Young people recommend “universal health-care including eye care, dental care, mental health services and medicine for all children who need it.”*

CCRC Youth Consultation, September 24, 2011

## B CHILDREN’S RIGHT TO BE EDUCATED

### Introduction

Education is a high priority in Canada and comparisons of educational achievement with other countries are generally positive. Using articles 28 and 29 of the Convention as a basis for analysis highlights issues of access for some groups of children, the nature of education, and learning about children’s rights.

### Right to an Education

Access to education, addressed in article 28, is nearly universal among the non-Aboriginal population. While some improvements are being made in Aboriginal education, ensuring access to quality, culturally appropriate education for all Aboriginal children on reserves and in urban settings remains a high priority. Children in migrant families, children with disabilities, and children in government or alternative care are other groups that face access challenges. (See sections on these groups.)

*Young people said, “Schools are really important. They are a constant thing in every child’s life.”*

CCRC Youth Consultation, October 2, 2011

Completion of high school remains a challenge within some groups. Strategies to prevent dropping-out and to support a successful transition from school to the work force are receiving more attention because Canada needs an educated workforce. A broader perspective on the role of education, as addressed in article 29, and more effective coordination of all services for children with special needs, such as using schools as community hubs, could enhance implementation of the right to education.

Another area of concern is the increasing use of user fees for required materials and activities that are part of the basic public school experience for children. User fees create inequitable opportunities for child development and contribute to the social marginalization of children whose families cannot afford them. A comparative analysis of user fees across the country and their impacts for children is needed to better evaluate equitable access to education.

### Right to Develop Full Potential

Article 29, which addresses the purpose, nature, and quality of education, receives too little attention in educational policy across Canada. Pressure to prepare children for the workforce often shapes curricula, leaving less focus on development of the whole person (para.29.1) and development for “responsible life in a free society, in the spirit of understanding, peace, tolerance, equality of sexes, and friendship among all people, ethnic, national and religious groups, and persons of indigenous origin” (para. 29.4). Fulfillment of this right varies greatly across the country. There have been no comparative studies or serious assessments to serve as a basis for evaluating progress.

## Right to Learn About Rights and Responsibilities

There is increased learning about human rights, including children’s rights. However, this is taking place on a very isolated and uneven basis across the country. Good practices document positive benefits for schools that teach and model rights-respecting relationships, including increased respect and cooperation on the part of children. While many adults fear that allowing children to learn about their rights will make them self-centered, these outcomes demonstrate that the opposite is true. (See research report for details.) Canada needs to scale up good, local practices and take steps to ensure that all children learn in school how to live in communities that respect the rights of all people.

### RECOMMENDATIONS

ACTION	ACTORS (Lead and Main Actors)
<b>Facilitate a national discussion about articles 28 and 29 of the Convention; research how well education systems across the country fulfill these articles; share good practices; and develop a strategy to provide equitable educational opportunities for all children across the country.</b>	Council of Ministers of Education
<b>Distribute information on article 29 and its implications for educating children, as part of a renewed focus on citizenship education.</b>	Citizenship and Immigration Canada
<b>Make children’s right to learn about their rights and respect for the rights of all people a mandatory part of the curricula in all education systems. This should be an essential part of the current focus on citizenship education and preparing a workforce for the 21st century.</b>	Council of Ministers of Education Provincial/territorial departments of education
<b>Make the education rights of Aboriginal children a specific focus in the mandate for a National Children’s Advocate, including the ability to investigate claims by Aboriginal children relating to their right to education.</b>	Parliament of Canada
<b>Undertake a comparative analysis of the different kinds of user fees across the country and their impacts for children, and take steps to abolish fees that prevent children from realising their right to education.</b>	Council of Ministers of Education
<b>Establish an Education Ombudsperson with a mandate to promote children’s right to education, particularly for groups that experience social exclusion and discrimination. Include a mandate to investigate claims by children about violations of their right to education.</b>	Provincial/territorial departments of education Provincial legislatures

*Recommendations young people have are “put the Convention up in every classroom...annual student-made report cards that allow students from kindergarten to grade 12 to evaluate their teachers on their effectiveness, skills and attitude/behaviour...small classes based on types of learning styles...every child should be allowed to use the toilet upon need...a block of time at the beginning of the year for teachers to get to know how their students learn, their struggles and weaknesses and their personality so that they can best teach them and help them succeed.”*

CCRC Youth Consultation, September 24, 2011

## C CHILDREN’S RIGHT TO ACCESS INFORMATION

### Introduction

Children’s right to have access to information, articulated in article 13 of the Convention, is only subject to “restrictions in law, or as necessary for respecting the rights and reputations of others or for national security, public order, public health, or morals.” Article 29.1.d on education also requires states to “make educational and vocational information and guidance available and accessible to all children.”

### Right to Information about Sexual and Reproductive Health

Recent policies regarding education about sexuality in some provinces, such as Ontario and Alberta, raise serious questions about the right of young people to access information. It is in the best interests of young people to have access to accurate and appropriate information to protect their health. This should take priority in determining provincial/territorial policies. A children’s rights impact assessment could be used to balance various rights claims, ensure that the views of young people are considered, and discern what would be in the best interests of all children.

### Right to Access Information on the Internet and Protection of Privacy

The growing focus on protecting children from exploitation through the Internet, especially sexual exploitation and trafficking, is important. It needs to be balanced with protecting young people’s right to access information through the Internet and to have their privacy protected. An additional concern is that measures designed to protect young people, such as recent amendments to the Criminal Code that mandate Internet service providers to report sexual content portraying children, could have unintended consequences for young people. Children may increasingly and unwittingly become subject to criminal charges for online activities, because they lack information about what constitutes illegal activity.<sup>39</sup>



In a similar vein, new education legislation in some provinces expands grounds for the discipline of children and youth for the inappropriate use of the Internet, and some parliamentarians and groups have advocated for tougher federal criminal legislation. A stronger focus on prevention through education for young people on the consequences of digital actions should be a priority.

A 2009 report by the Canadian Council of Child and Youth Advocates and Privacy Commissioners highlighted the commercial exploitation of young people through the Internet and the need for young people to learn how to protect their privacy as they use the Internet to communicate with others, gather information, play games, or enjoy entertainment.<sup>40</sup>

More effective education is needed to equip young people to navigate the Internet safely, to discern between reliable and unreliable sources of information, to protect themselves from exploitative actors, to protect their own privacy and safety, and to avoid illegal and otherwise harmful actions that infringe the rights of others. Young people need to be involved in the design and delivery of education about the Internet.

## Right to Access Information about Birth and Biological Parents

The right of adopted children to know their biological parents, addressed in article 7 of the Convention, is implemented unevenly from one province to the next. Little progress has been made on the UN Committee recommendation to amend legislation to ensure birth information is made available to adoptees, made in the Concluding Observations from Canada's second review.<sup>41</sup>

In May 2011, the Supreme Court of British Columbia ruled that children born through artificial reproduction have the right to access information about the donors involved in their origins. The court ruled that the 5% of the population who are donor offspring and adopted persons have the same right to information about their biological identity as the 95% of the population who know their birth parents.<sup>42</sup>

## RECOMMENDATIONS

ACTION	ACTORS (Lead and Main Actors)
<b>Complete child rights impact assessments for all decisions that affect children's rights to access information and education, to ensure that the best interests of children are given priority and that the views of young people are considered.</b>	Federal/provincial/territorial departments responsible for communications policy, privacy, and access to information
<b>Include special provisions for young people in the laws that require Internet service providers to report child pornography and/or in prosecutorial guidelines. These should include age-appropriate corrective measures for young people who may have engaged in activities without awareness of their illegality.</b>	Justice Canada

ACTION	ACTORS (Lead and Main Actors)
<b>Regulate advertising directed to young children – especially advertising embedded in children's electronic games and play spaces – to prohibit the collection of information from children, and to protect the privacy of young people.</b>	Federal/provincial/territorial departments of industry and consumer affairs
<b>Develop and implement comprehensive education and awareness strategies to help young people acquire skills and discernment in the use of the Internet and social media – including self-protection from exploiters and knowledge about illegal activities – to prevent engagement in illegal activities.</b>	Provincial/territorial departments of education
<b>Pass a law to ensure that all adults who were adopted and adults who were born through assisted reproduction can obtain appropriate information about their biological parents.</b>	Justice Canada Parliament of Canada

# D CHILDREN'S RIGHT TO AGE-APPROPRIATE FORMS OF CRIMINAL JUSTICE

## Introduction

An analysis of children's rights in Canada's youth criminal justice system reveals progress made, threats of regression, gaps, and areas that need greater attention.<sup>43</sup>

The rate of youth crime and youth detention in Canada decreased significantly after the Youth Criminal Justice Act (YCJA) came into force in 2003. Increased use of diversion programs and alternatives to incarceration have received positive reviews by most police forces, practitioners in youth justice, and provincial/territorial governments, who are responsible for the administration of youth justice. Ideally, the current good practices would be expanded and the full provisions of the YCJA would be implemented before a comprehensive ten-year review of its effectiveness.

## Proposed Changes to the Youth Criminal Justice Act

In 2010, Bill C-4 proposed major changes to the YCJA. It was not passed before the 2011 election, but its provisions are expected to be in omnibus criminal justice legislation, to be introduced in the fall 2011 session of parliament. Many of the proposed changes are of major concern because they are

contrary to: evidence-based research into effective measures in youth justice, specific provisions in the Convention, broad public consultations, recommendations to Canada from the UN Committee on the Rights of the Child, and accepted international standards for youth justice.

## Children’s Rights in the Criminal Justice System

Following is a summary of other important issues for federal and provincial/territorial governments:

- The lack of response to youth justice recommendations made by the UN Committee on the Rights of the Child after Canada’s second review.
- The need to fully incorporate the provisions of the Convention into Canadian law, including youth justice and social policies that prevent crime.
- All law enforcement agencies need clear guidelines on the use of force with young people, including the use of tasers and chemical restraints.
- The need to create structures and opportunities for young people to have a voice in decisions that affect them individually and in youth justice policies.
- The need to shift the approach from reacting to fear of youth crime to investing in community-based programming, education, and social policies that have been shown to prevent young people from engaging in criminal activity.

These are explored in detail in the background report.

## RECOMMENDATIONS

ACTION	ACTORS (Lead and Main Actors)
<b>Use documented evidence to develop laws, policies, and practices for youth justice, and ensure that they comply with the Convention. Identify good program practices and expand them across the country through cooperation between all levels of government.</b>	Justice Canada Provincial/territorial departments of justice
<b>Expand the use of extra-judicial measures to keep young people out of the justice system, using best practices and timely interventions.</b>	All levels of government, law enforcement agencies, and community services working in cooperation
<b>Adopt a two-step process for charging young people (internal charge approval prior to charging) as used in British Columbia, Quebec and New Brunswick.</b>	Provincial/territorial departments of justice
<b>Use detention only as a measure of last resort and for the shortest possible period of time. Take specific measures to ensure that children are no longer detained with adults and that males are no longer detained with female young</b>	Justice Canada Provincial/territorial departments of justice

ACTION	ACTORS (Lead and Main Actors)
<b>offenders. Withdraw Canada’s reservation to article 37 of the Convention.</b>	
<b>Fully protect the privacy of all children in conflict with the law at all stages of the justice system process, consistent with article 40 of the Convention.</b>	Justice Canada
<b>Put a moratorium on the use of tasers on adolescents by all police forces until independent research is available on their safety with that age group, including comparison with other means of restraining young people in immediate danger of harming themselves or others.</b>	Public Safety Canada
<b>Develop guidelines for restraint and use of force against children in arrest and detention (as distinct from adults), for use by all law enforcement officers and for all custody facilities (staff). Accompany the guidelines with training programs on the use of force with young persons under the age of 18. Include training to understand and respond to the behaviours of young people with mental illnesses and disabilities.</b>	Public Safety Canada Provincial/territorial departments of justice
<b>Shift resources to social policies that are known to have a significant impact on levels of youth crime. Prevent young people from falling into the criminal justice system through earlier response to the needs of young people and increased investment in mental health services, education, poverty alleviation, access to recreation, and cultural opportunities.</b>	Federal/provincial/territorial departments responsible for crime prevention and social development
<b>Provide user-friendly public information on the facts about youth crime, to help reduce the disproportionate fears concerning youth crime that result from publicity of specific incidents.</b>	Statistics Canada Justice Canada
<b>Inform the Committee on the Rights of the Child what specific steps will be taken to establish a system of youth justice that fully integrates the provisions and principles of the Convention and other relevant international standards such as the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules) and the United Nations Guidelines for the Prevention of Juvenile Delinquency (the Riyadh Guidelines). The report should include specific steps to implement the recommendation from the second review regarding the federal government’s obligation to ensure that provinces and territories are aware of their obligations under the Convention.</b>	Justice Canada

# E CHILDREN'S RIGHT TO EARLY CHILDHOOD CARE AND DEVELOPMENT

## Introduction

The importance of early childhood for the health and full development of children is widely recognized. Its importance for the economy and social stability of Canada is also recognized in research studies. Putting what we know into practice, however, has been slow.

This section focuses on the benefits of a children-first, rights-based approach to helping resolve what has become an acrimonious, polarized, and unproductive debate about early childhood care and learning in Canada. It also addresses the need for equitable treatment in early childhood. Many other factors involved in early childhood are addressed elsewhere in this report.

This report draws on existing analytical reports from various sources. It identifies common themes and priorities, and it proposes recommendations to move past the policy stalemate.<sup>44</sup>

## The Early Development of Canadian Children

The majority of children under age 6 in Canada are doing reasonably well in terms of their development, according to *The Well-Being of Canada's Young Children*, the most recent Government of Canada report on the topic in 2008. However, a significant percentage are not doing well in most of the surveyed indicators with 10 to 20% of children, depending on the indicator, not developing to expected thresholds.<sup>45</sup> A common theme in reports from a range of sources is an unacceptably high percentage of young children who lack access to the basic family and community resources required to ensure good health, brain development, and early development of the cognitive and social skills needed for full participation in Canadian society. A 2009 Senate report on early childhood reinforces this analysis.<sup>46</sup> Academic studies, using widely accepted early childhood development outcome indicators, conclude that about 25% of children entering kindergarten have not developed the basic, functional capacities for school entry. This includes some children in middle-income families.<sup>47</sup> The Chief Public Health Officer's *Report on the State of Public Health in Canada 2009: Growing Up Well – Priorities for a Healthy Future*<sup>48</sup> identifies the widening gap in resources available to children in some families, compared to others, as the major public health challenge for Canada. A 2010 UNICEF report, *The Children Left Behind*,<sup>49</sup> provides an analysis of the impacts of this inequality for children and for society as a whole.

## The Policy Environment for Early Child Care, Learning and Development

The primary role of parents and family in child development, especially in the early stages, is recognized

in the Convention. The contribution of parents and the various costs associated with child-rearing are not sufficiently recognized in debates about policy priorities and distribution of public resources in Canada. This is true both in the design of general child benefit and transfer policies and in the more specific design of early child care and development policies.<sup>50</sup> Public policy can play a more significant and effective role in supporting families. To be effective, it needs to be based on accumulated evidence about optimal child development for individual children and for society as a whole. As articulated in article 18 (2), "States Parties shall render appropriate assistance to parents and legal guardians in the performance of their child-rearing responsibilities and shall ensure the development of institutions, facilities, and services for the care of children."

Policy decisions related to early childhood in Canada are not always evidence-based. They often reflect polarized, ideological debates about the role of women and of government in society. Resistance to public support for out-of-home child care persists, in part because early child development and care are dichotomized. Out-of-home child care is perceived as substitute supervision while parents are at work – a service that should be privately arranged by families who choose it – rather than as support for all children and families to achieve optimal child development and learning as a public good. The debate polarizes 'stay at home' working parents and other working parents whose children are in formal child care centers. It also ignores the fact that there is a variety of circumstances in-between, including regulated informal care, and part-time access to child development programs for 'stay at home' parents with young children.

One result of this custodial approach to out-of-home child care is the fact that there are only enough regulated child care spaces for 20% of young children, while 70% of mothers are in the paid labour force. Whatever the philosophy of parents or governments, the majority of Canada's children are in some form of out-of-home care, which raises major concerns about affordability, access, and quality.

At least three-quarters of Canadians support the establishment of a national child care program and consider the lack of affordable child care to be a serious problem. The public need for quality-assured child care and support for early childhood development is not satisfied by currently available options, which include kin and neighbour child care.

In its response to the 2009 Senate report, the government lists how much money is spent in supporting families through its current policy priorities, but it does not consider the range of policy options that could strengthen early years development for all children and also seriously address the question of the children currently left behind.<sup>51</sup> There is well documented evidence on the benefits of taking a universal approach to early child development in public policy – including a special focus on the most vulnerable such as children living in low income households, Aboriginal children, children with disabilities or special needs, children in refugee and immigrant families, and children in remote communities. The best policy mix will promote healthy child development in a variety of quality care contexts and affordable access to quality early child development care and learning.

A child-first approach will advance the use of recognized child development knowledge to promote optimal health, socialization, and learning for all children. A child-first approach will recognize the fact that most young children are in, or can benefit from, some form of out-of-home care and development program. A rights-based approach would ensure first call for children on the nation's resources and



equitable treatment for all children in Canada, ensuring that no children are left behind because of where they were born, whether both parents work, or a low level of family income and resources.

## Policy Directions for Early Childhood Development

- **A Systematic Approach to Early Childhood Policy**

The fact that Canada has no coherent national family or child policy, no cabinet-level position specifically focused on the coordination and impact of all policy decisions for children and families, and no national children’s advocate, results in unresolved debates on strategic choices and the lack of effective coordination of policies that influence children and families.

Canada spends less on early childhood than other comparable countries, based on expenditure analysis by credible international bodies.<sup>52</sup> This analysis is contested by the Canadian government, but no complete, transparent account has been provided to establish whether young children receive a reasonable share of public investment or not. A coherent strategy with reasonable, transparent budget allocations is needed.

- **Quality Child Care, Learning and Development Options**

There is significant discussion in Canada about issues of quality within the child care sector. There are no minimum national standards and there are significant differences between standards set by each province or territory. Individual incidents of negligence receive significant media attention and erode public confidence. But the much greater issue, which gets little media attention, is the lack of any quality assurance in the large, unregulated sector. The shortage of regulated spaces means that only 20% of parents can choose care that has some measure of quality control. The majority of parents seeking child care must choose from available options in the unregulated sector.

- **Equitable Impact for All Children**

On repeated occasions in recent years, the federal government has been asked to provide evidence showing that current policies meet the provisions in Canada’s *Charter of Rights and Freedoms* and in the Convention for equitable treatment of all children – ensuring that children living in low-income and single parent households are not disadvantaged by policy. Funding for early childhood care and learning through tax credits and transfers to provinces is one of the key areas of concern.

In 2003, the UN Committee on the Rights of the Child asked for an equity impact analysis in the Concluding Observations from Canada’s second review on the Convention’s implementation.<sup>53</sup> In 2007, a Senate committee report on the rights of children asked for a similar analysis,<sup>54</sup> and in 2008, the UN Committee on the Elimination of Discrimination against Women highlighted similar concerns in its review of Canada.<sup>55</sup> Canada’s combined *Third and Fourth Reports* on children’s rights and government responses to parliamentary committee reports repeat information outlining how much money is spent by different jurisdictions in Canada, but they fail to provide evidence to show that all children are being treated in an equitable way by the current mix of policies.

- **Adequate Investment and International Comparison**

Data published by the government and analyzed by the Organization for Economic Cooperation and Development (OECD) suggests Canada spends less on early childhood in general than do other

comparable countries.<sup>56</sup> This has also been documented in an international report by UNICEF.<sup>57</sup> The average investment in early childhood among industrialized countries is 2.3% of GDP, while Canada spends just over 1%. Within the relatively low level of investment in early childhood generally, the largest relative gap with other countries is in expenditure on early childhood care and development. Most industrialized countries spend an average of 0.7% of GDP on this component, while Canada spends 0.25% of GDP, far short of the international benchmark of 1% of GDP. Federal transfers for this purpose in 2007–2008 were reduced by 37% from 2006, and by 61% from the previous government’s commitment for 2009.

International and domestic research documents a positive return on investment in early childhood care and development. Benefits include increased capacity for success as adults, reduced health care and other social costs over a lifetime, and greater social cohesion through participation in community-based initiatives focused on the common goal of raising healthy children who are integrated into society.

## RECOMMENDATIONS

### ACTION

### ACTORS (Lead and Main Actors)

**Publish a thorough report that provides:**

- **A full, child-centered account of current expenditures on early childhood policies and programs, including all child benefits and transfers;**
- **An equity impact analysis (a comparative analysis of the impact of current policies and expenditures for different groups of children);**
- **Analysis of the current situation of groups with higher vulnerability in the early years.**

**This should be done before the third review of implementation of the Convention to provide accurate data and accountability.**

Public Health Agency of Canada  
Human Resources and Skills  
Development Canada  
Federal Inter-departmental Working  
Group on Children’s Rights

**Develop and implement a national child-centered, comprehensive, and integrated strategy for early child development and care, as a high priority. The strategy should include specific targets, funding allocations to meet targets, quality assurance benchmarks for all non-parental care options, and an accountability mechanism for the outcomes of public funds allocated to early childhood.**

Human Resources and Skills  
Development Canada  
Provincial/territorial governments

**Implement a public education strategy on the importance of early child development, and ensure regular public reporting on the impact of national policy choices by all departments for children and families.**

Public Health Agency of Canada, in  
cooperation with civil society groups  
and specialists in early childhood  
development

“Clubs and teams provide lots of opportunity. There are lots of clubs in high schools, not primary schools. Primary schools are cutting recesses. There is a need to organize clubs in younger grades and more things to do are needed in primary school. For instance, at some schools, children are not allowed to play on the play structures in the winter because they are deemed unsafe.”

CCRC Youth Consultation, October 2, 2011

## F CHILDREN’S RIGHT TO PLAY

### Introduction

Article 31, commonly known as the right to play article, is not mentioned in the official reports by the federal/provincial/territorial governments. It is not well known or widely used in Canada.

Young people recommend these actions:

- Government can help
- Teachers should respect time for play — not too many hours
- More pamphlets, more ads to parents to get knowledge, more options so that kids can play what they like

CCRC Youth Consultation, October 2, 2011

In recent years, children’s physical activity has been on the national public agenda in relation to concerns about obesity, not as a focus on children’s development or rights. Contrary to the common perception that play is an optional activity for children, article 31 considers it an essential element for healthy child development, with far-reaching implications for society.

Many factors hinder unstructured play. These include less free time, safety concerns, preference for structured programs, reduced natural spaces for play, more passive time in front of screens, and professionals who do not understand its vital role in child development.

National sport policy focuses primarily on the development of expert athletes, with less attention to children’s play. Recreation policies at the provincial/territorial and municipal levels have a somewhat greater focus on children, but few explicitly recognize children’s right to play.

Concerns about safety often lead to reduced space for children to engage in unstructured play and explore the natural world. While progress has been made in prevention of abuse in sport programming,<sup>58</sup> a comprehensive strategy is needed to prevent violence against children in formal and informal recreation, without restricting the physical and social space children need to explore their world through play.

## RECOMMENDATIONS

ACTION	ACTORS (Lead and Main Actors)
<b>Learn about the right to play in article 31 and consider its implications for households, communities, and all levels of public policy.</b>	Parents, community leaders, and professionals who work with children and inform public policy discussions

ACTION	ACTORS (Lead and Main Actors)
<b>Develop a strategy for implementing article 31, as part of a comprehensive strategy for implementing children’s rights in Canada. As a first step, identify the specific governing agencies with key responsibilities. Establish a mechanism for communication and coordination between the major actors, and include avenues for participation by young people and civil society organizations.</b>	Sport Canada, in cooperation with provincial/territorial departments responsible for recreation policies
<b>Develop municipal play strategies that include diverse settings, including natural settings within proximity of residential areas where children live. Establish and implement measures to stop and prevent all forms of violence, abuse, and exploitation in children’s sport and in less formal recreation.</b>	Federation of Canadian Municipalities, Big City Mayors Caucus, and regional associations of municipal leaders
<b>Establish and implement measures to stop and prevent all forms of violence, abuse, and exploitation in children’s sport and in less formal recreation.</b>	Sport Canada
<b>Lead a national initiative to improve the culture of respect for children’s right to play in the development of sport and recreation programming across the country, and develop training programs for professionals who engage with youth.</b>	Sport Canada

## G CHILDREN’S RIGHT TO FAMILY, IDENTITY AND CULTURE

### Introduction

The Convention clearly describes the rights of every child to a family, identity and culture (articles 8, 20, 21 and 30). When children are in the care of the state, governments are obliged to ensure that the best interests of the children have priority in all decisions affecting them. If a child cannot return to a birth family, the state must make every effort to find a substitute that is in the child’s best interest. This ideally entails finding an alternative permanent family and ensuring that cultural connections are maintained.

Few Canadians would dispute that it is in the best interests of a child to grow up in a stable, nurturing family. Yet tens of thousands of children are growing up in foster care in our provinces and territories, shunted from temporary home to temporary home, and then into group home after group home. Each year in Canada, of the estimated 30,000 to 40,000 children in care who are legally available for adoption, only about 7% are adopted. Most children ‘age out’ or are ‘emancipated’ from the child welfare system between the ages of 16 to 21 without having permanent families.

For Aboriginal children, who are greatly over-represented in the child welfare system, this is particularly critical. When they come into the foster care system they often lose their connections to their extended family, band or community, and to their culture. Some speak about feeling that they do not belong anywhere.

Compared to Canada, other countries have increased their adoption placements in acknowledgment of their responsibility to the children in their care. They have achieved this by setting targets and providing funding incentives for recruitment and support. As a result of these efforts, for example, significantly more children have found families in both the United Kingdom and United States than in Canada.

## Factors that Affect Implementation of Children’s Right to a Family

Federal officials often cite jurisdictional divisions as the reason for a lack of action by the federal government. Domestic adoption legislation, policy, and practice are set by each of the provinces and territories and vary considerably from jurisdiction to jurisdiction. As a result, Canada has no national adoption legislation, no national standards, no national database on children in care or adoption, little research on adoption outcomes, and no federal funding.

The federal government has the responsibility to implement the rights of all children – with particular responsibility for Aboriginal children who comprise more than 50% of the children in foster care who need permanent families. The UN Committee on the Rights of the Child has stated that the federal government must enact appropriate safeguards to ensure that the existence of decentralized jurisdictional responsibility does not lead to discrimination in the rights that children enjoy in different regions of a country. In Canada, differences in legislation, policy, practices, and funding result in unequal access to services and an uneven chance that a child in the child welfare system will have a family.

## Aboriginal Children and Adoption: A Contentious Issue

There are specific issues that must be addressed in relation to adoption and the rights of Aboriginal children. In addition to the basic right to a family, articles 20 (3) and 30 of the Convention state that all children have a fundamental right to their culture and language.

Adoption of Aboriginal children is a complex issue, with little agreement between Aboriginal people and provincial/territorial child welfare authorities on how customary forms of adoptions can be undertaken in ways that are acceptable to Aboriginal stakeholders. This is an issue far broader than the situation in Canada. Indigenous youth in many parts of the world leave child welfare systems without permanent families in alarming numbers, suffering extremely poor social, educational, physical and mental health outcomes.

There are few national or international discussions about the issues between indigenous and mainstream child welfare authorities. These discussions are uncomfortable and politically sensitive, but they are necessary in order to ensure that the rights of Aboriginal children to family, culture, and

identity are honoured. Given the poor outcomes for children who ‘age out’ of foster care, this is an enormous gap in social policy that should be addressed as a high priority by the federal, provincial and territorial governments.

## The Right to Identity

Article 7 of the Convention outlines the right of an adopted child to a name and to know, as far as possible, her or his biological parents. Article 8 recognizes the right of the child to preserve his or her identity, including nationality, name and family relations.

Adoption disclosure and reunion policies vary greatly from one province or territory to another. There has been little action on the recommendation of the UN Committee in the Concluding Observations of the second review (para. 31) to amend legislation to ensure birth information is made available to adoptees. Although adoption law in Canada is a provincial matter, the federal government has an obligation under the Convention to ensure that the terms of the Convention are implemented throughout all provinces and territories.

## The Right to Equal Parental Leave Benefits for Adopted Children

Currently adoptive parents do not receive the same level of parental leave benefits as biological parents. Adoptive parents have advocated for years for equality of benefits. The unequal treatment raises questions about implementation of the principles of “the best interests of the child” and non-discrimination.

## Inter-country Adoption

Article 21 of the Convention requires governments that permit inter-country adoption to ensure that the ‘best interests of the child’ are the paramount consideration. Further, in article 21 (c), the Convention states that the child must enjoy safeguards and standards equivalent to those existing in the case of national adoption. The Hague Convention on Protection of Children and Cooperation in Respect of Intercountry Adoption (the Hague Convention) is an elaboration of article 21 of the Convention on the Rights of the Child.

In the Hague Convention, the central authority, or primary duty-bearer, is obligated to ensure that the provisions of the Convention are implemented. Since Canada is a federal state and adoption is a provincial/territorial responsibility, the role of central authority is shared between the federal government and provinces and territories. Canada’s federal Central Authority, the Intercountry Adoption Services unit in Human Resources and Skills Development Canada, has allocated limited resources to adoption and has interpreted its role narrowly. It has been unable to provide provinces and territories with timely, current information as required under article 7 of the Hague Convention. It has provided little in the way of leadership and coordination with other federal departments responsible for aspects of inter-country adoption, and it has limited ability to provide technical support to countries from which Canadians adopt children, to help them fully implement the Hague Convention.



Despite the systemic limitations, Canada’s governments have often provided strong oversight of inter-country adoption procedures within Canada and have complied with article 21 (a) (c) and (d) by closing adoption programs in countries where there is proof of trafficking or strong suspicion about fraudulent documentation. Canada could, however, do much more to promote full implementation of the Hague Convention if the federal government, through its Central Authority, took on a more robust leadership and coordination role.

## RECOMMENDATIONS

ACTION	ACTORS (Lead and Main Actors)
<b>Urgently convene all stakeholders to develop an effective plan to reduce the unacceptably high number of children leaving care without a permanent family or connections to their culture. Pay special attention to the over-representation of Aboriginal children in child welfare and in the group of adolescents who leave care without supportive family or cultural connections.</b>	Human Resources and Skills Development Canada Provincial/territorial departments responsible for child welfare Aboriginal Affairs and Northern Development Canada
<b>Provide funding and other incentives to increase the number of adoptions from foster care for both Aboriginal and non-Aboriginal children.</b>	Aboriginal Affairs and Northern Development Canada Provincial/territorial departments responsible for child welfare
<b>Collect and publicize annual data on children in care and adoption.</b>	Human Resources and Skills Development Canada
<b>Provide equitable funding for services to First Nations children on reserve.</b>	Aboriginal Affairs and Northern Development Canada
<b>Ensure that birth information is made available to all adopted adults and adults born through assisted reproduction across Canada.</b>	Justice Canada
<b>Extend parental leave benefits to provide an adoption transition leave through the federal Employment Insurance program.</b>	Human Resources and Skills Development Canada
<b>Provide technical assistance to low-income ‘sending’ countries, particularly sources of a high proportion of Canada’s inter-country adoptions, to encourage them to adopt or fully implement the Hague Convention on Inter-country Adoption.</b>	Department of Foreign Affairs and International Trade Canadian International Development Agency Justice Canada Citizenship and Immigration Canada

# 5 Paying Attention to Vulnerable Children



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## A FULFILLING THE RIGHTS OF ABORIGINAL CHILDREN

### Introduction

Improving the situation of Aboriginal children in Canada is a top priority. There is ample documentation of their situation and a high level of consensus in the analysis and recommendations for action. Recent reports and recommendations have been made by the Auditor General of Canada, the Canadian Council of Child and Youth Advocates, the Senate Standing Committee on Human Rights, UNICEF Canada, and Aboriginal organizations.<sup>59</sup> The UN Committee on the Rights of the Child has twice asked Canada to take action to address the gap between Aboriginal and non-Aboriginal children in basic areas for child development, such as health, education, child protection, and poverty. The findings in all these reports are similar.

The response continues to be inadequate. While the Government of Canada made an official apology for past treatment in residential schools in 2008 and recently ratified the UN Declaration on the Rights of Indigenous Peoples, the current situation is still best described as continuing neglect.

First Nations, Métis, and Inuit children (collectively Aboriginal children) live in all provinces and territories. They are a growing percentage of the total population of children. Enabling them to develop their full potential is a shared responsibility and would be a benefit for all Canadians. The federal government has the lead responsibility, but other levels of government and Canadian civil society can also take steps to ensure that serious violations of their rights are resolved and that they have an equal opportunity to develop their potential.

Some of the major concerns and recommendations for change are listed below. The seriousness

of this situation warrants consideration of separate reports from Aboriginal communities by the UN Committee on the Rights of the Child and further investigation.

## Indicators of the Need for Special Attention

- Aboriginal children disproportionately live in poverty, on and off reserves. While statistics vary in the different reports, there is consensus that the extent and depth of poverty is a major barrier to developing the full potential of Aboriginal children.
- While Aboriginal children comprise about 5% of the total population of children, they account for approximately 25% of the children in government care. Of particular concern is the high number of Aboriginal children who leave the child welfare system at age 16 or 18 without any meaningful attachment to a supportive family or their culture.
- Lower levels of educational achievement have life-long implications for income, well-being, and full participation in Canadian society.
- Injury and death rates are disproportionately high for Aboriginal children, compared to all children. Aboriginal children face greater health risks than non-Aboriginal children due to poor living conditions. Poor nutrition, substandard housing, poor water quality, and limited access to culturally appropriate health care contribute to higher rates of infant mortality, low birth weights, respiratory illnesses, diabetes among children, and developmental disabilities. Higher rates of teen suicide and mental illnesses have also been documented. The suicide rate for Aboriginal girls in Canada is among the highest in the world.
- For Aboriginal children and youth in Canada, there is a greater likelihood of involvement in the criminal justice system – including detention in a youth custody facility – than there is of high school graduation.<sup>60</sup>

## Inequitable Treatment in Child Welfare, Education, and Health

- In 2008, the Auditor General of Canada documented that funding for First Nations child welfare services on-reserve was 22% less than similar services for non-Aboriginal children. Instead of resolving the substantive issues, the federal government has blocked every effort at redress. Of particular concern for children’s rights is the federal government’s argument that federal services cannot be compared with provincial services. This violates the Convention right to equitable treatment for all children in Canada.
- Several reports have documented inadequate and inequitable funding for the education of Aboriginal children, compared to that for non-Aboriginal children. Current estimates are that Aboriginal children receive \$2,000 - \$3,000 less per student than non-Aboriginal children. This matter has been raised in Parliament, but it has not been addressed. Canada’s combined *Third and Fourth Reports* on children’s rights cites new programs in Aboriginal education, but it does not address the question of equitable treatment, as requested in the second review. Equitable treatment will include secure and sustainable funding for capital expenses and support for the development, organization and delivery of culturally appropriate education to every school-age child, according to standards for which government is accountable.
- The combined *Third and Fourth Reports* cites continuation of the Aboriginal Headstart program as a

response to the need for of early childhood education, but it does not report that only about 10% of Aboriginal children off-reserve have access to such programs.

- In 2003, the UN Committee on the Rights of the Child asked Canada to address inequitable access to health care for Aboriginal children, with particular attention to remote communities. The combined *Third and Fourth Reports* cites more programs, but does not address the question of equitable treatment or provide evidence to show that disparities in the health status of Aboriginal children will be reduced.
- In 2007, Parliament adopted Jordan’s Principle to reduce jurisdictional disputes in the provision of services for Aboriginal children. This was a response to an awareness campaign that linked the story of Jordan, a First Nations child, with the Convention principle of the ‘best interests of the child.’ Jordan’s Principle states that necessary health care and other children’s services will be provided to an Aboriginal child in need without delay, and disputes about which government agency is responsible for funding that care will be decided afterward. Although approved by Parliament, Jordan’s Principle is not being consistently implemented. Many Aboriginal children continue to be placed into child welfare in order to receive appropriate medical care and services.<sup>61</sup> In some jurisdictions, Jordan’s Principle is applied only to the most complex health care cases, instead of broad application, as would be consistent with Canada’s obligations under the Convention.

## RECOMMENDATIONS

ACTION	ACTORS (Lead and Main Actors)
<p><b>Immediately provide equitable funding for First Nations child welfare and Aboriginal education and publicly table detailed reports to demonstrate how current policy complies with the principle of equitable treatment. These reports should also be provided to the UN Committee on the Rights of the Child as a supplement to the combined <i>Third and Fourth Reports</i>.</b></p>	<p>Aboriginal Affairs and Northern Development Canada Canadian Heritage</p>
<p><b>Immediately convene a meeting of provincial and territorial governments and Aboriginal leaders, focused specifically on the situation of Aboriginal children on and off-reserves, to agree on a coordinated plan of action with targets, timelines, resources, and public accountability for resource allocation and use.</b></p>	<p>Aboriginal Affairs and Northern Development Canada</p>
<p><b>Ensure that earlier recommendations with regard to equitable treatment of Aboriginal children in Canada are being seriously addressed, including evidence of genuine improvements for the affected children, and, if necessary, undertake an independent investigation of the situation.</b></p>	<p>UN Committee on the Rights of the Child, in cooperation with the UN Special Rapporteur on the Rights of Indigenous Peoples and the UN Permanent Forum on Indigenous Issues</p>

## B PROTECTING THE RIGHTS OF CHILDREN IN GOVERNMENT AND ALTERNATIVE CARE

### Introduction

There were an estimated 67,000 children in out-of-home care across Canada in 2007. The most common reason for placing children in substitute or alternative care is abuse or neglect. Other reasons include death of parents, parental mental illness, drug and alcohol abuse, poverty, and family violence.<sup>62</sup>

There are few national sources of information or analysis of the situation of children needing special protection. The rate of child abuse investigations in 2008 (39.16 per 1,000 children) was similar to what it was in 2003 (38.33 per 1,000 children), according to a national database on child abuse.<sup>63</sup> These are only officially reported cases. Research highlights that child neglect and abuse are under-reported in all parts of Canada.

Canada's ten provinces and three territorial jurisdictions each have their own child welfare legislation and their own systems for protecting children and delivering services. Common elements in all jurisdictions include the following:

- A definition of "a child in need of protection" establishes the grounds for intervention by a government department or a child protection agency;
- A child's family is legally recognized as the primary caregiver; removing a child from a family is considered a "last resort";
- The 'best interests of the child' principle is legally recognized, but a best interest determination is generally done only in a court proceeding after a child has been found in need of protection because a minimum standard of parental care has not been met;
- When a child is removed from the care of parents, there is a duty to explore alternative care (i.e. kinship care, placement with extended family or a community member) before placing the child in substitute care (i.e. in a foster home, group home, or residential facility); and
- A disproportionate percentage of Aboriginal children are in the child welfare system, with a significantly higher percentage in Western Canada.

There are significant differences in the definitions of a child in need of protection, the age limits for child protection, implementation of child welfare legislation, and the services provided to children. The need for significant changes in child welfare to meet Convention obligations has been identified at all levels, from professional practitioners to young people in care.

In 2009 a national, multi-disciplinary conference on the *Best Interest of the Child: Meaning and Application in Canada* brought together practitioners, policy-makers, and advocates. A workshop on

There currently are no Canada-wide statistics on the number of children and youth placed by child welfare authorities in out-of-home care. Child welfare services fall under the jurisdiction of provincial and territorial authorities, making it difficult to compile statistics at a national level. The most current estimate is provided by: Mulcahy, M & N. Trocmé, "CECW Information Sheet #78E: *Children and Youth in Out-of-Home Care in Canada*". Montreal, QC, Centre for Research on Children and Families, McGill University, 2010, available at [www.cecw-cepb.ca/sites/default/files/publications/en/ChildrenInCare78E.pdf](http://www.cecw-cepb.ca/sites/default/files/publications/en/ChildrenInCare78E.pdf) accessed October 25, 2011.

*"We would like you [the UN Committee on the Rights of the Child] to ask the Government of Canada why there are no schools in many of our communities and why so many of our schools are in such poor condition. We want to know why the level of funding we receive for education is less compared to communities in other parts of Ontario and Canada. We also want to know why we have to fight so hard for what our peers in other parts of Canada are able to take for granted."*

Youth Dream Team (River Tenasco, Daisey Brascoupe, Shawnesia Ottawa, Chelsea Edwards, Shauna Jerome)<sup>1</sup>

*"... Well the three or four things I would like people to know about me is. One, I do not like broken promises. Two, I do not like seeing my siblings going to school in washrooms. And three, I would like them to know too that I AM NOT GIVING UP."*<sup>2</sup>

Shannen Koostachin, 14 years old, 2008

*"Moving from home to home, I always had to change schools, and that prevented me from getting comfortable with the teachers or the school. It's important for children and youth to be stable in one place and in what they're doing."*

*"We lost a lot of students because they couldn't handle the change from reserve to city. The transition is sometimes too much for students to take and it affects their education."*<sup>3</sup>

Youth Consultation, 2009

*"I would like to see native aboriginal students treated and funded the same as any other non-aboriginal students because we are all students, we are all human, we are all equal and should be treated as such."*<sup>4</sup>

Wesley

*Young people said, "Clean water should be provided on reserves." They ask for better schooling on reserves, more funds for community centers and housing, funds for mental health and drug abuse therapy, and to raise more awareness about those issues throughout Canada to all Canadians in schools. Youth recommend "history classes helping us understand what happened to Natives and where racism has stemmed from, and how they live now, not just in the past."*

CCRC Youth Consultation, September 2011

*"We don't know much about Aboriginal issues even though we're still in school and we don't know many Aboriginal people. It's like they are always separated from us. Sometimes it seems like a good idea to integrate them into our schools but then they are away from home and probably getting bullied."*

CCRC Youth Consultation, August 24th, 2011

*"Aboriginal children are experiencing high rates of abuse and sex exploitation. Their parents and grandparents came out of residential schools where they experienced those things and they're passing them on. Need to help Aboriginal parents as well without trying to impose belief and values."*

CCRC Youth Consultation, August 24th, 2011

1 Dream Team, "Letter to the UNCRC," in *Our Dreams Matter Too: First Nations children's rights, lives and education: An alternate report from the Shannen's Dream Campaign to the United Nations Committee on the Rights of the Child on the occasion of Canada's 3rd and 4th periodic reviews*, Toronto, The Office for the Provincial Advocate for Children and Youth, 2011, p. 11, available at <http://www.fncfcs.com/shannensdream/our-dreams-matter-too>, accessed October 9, 2011.

2 Shannen Koostachin, Letter dated July 27, 2008, available at [www.fncfcs.com/sites/default/files/shannensdream/Shannens-letter.pdf](http://www.fncfcs.com/sites/default/files/shannensdream/Shannens-letter.pdf) accessed October 10, 2011.

3 Landon Pearson Resource Centre for the Study of Childhood and Children's Rights, *Shaking the Movers III Child Rights in Education CRC Articles 28, 29, and 42*, Final Report, Ottawa, Landon Pearson Resource Centre, June 2009, p. 9.

4 Wesley, in *Our Dreams Matter Too: First Nations children's rights, lives and education*, An alternate report from the Shannen's Dream Campaign to the United Nations Committee on the Rights of the Child on the occasion of Canada's 3rd and 4th periodic reviews, Toronto, The Office for the Provincial Advocate for Children and Youth, 2011, p. 26, available at <http://www.fncfcs.com/shannensdream/our-dreams-matter-too>, accessed October 9, 2011.



child welfare called for a major overhaul of child welfare in Canada to reflect Convention principles. Of primary concern are two tendencies within provincial/territorial child welfare practice: (a) children are still treated as objects of protection and pity rather than rights-holders who need support to exercise their rights; and (b) a family-centered approach is used rather than a child-centered approach within a family context. The implications of the Convention for child protection laws, policies, and practices need more attention across the country.

In 2010 the National Youth in Care Network facilitated a nation-wide process to give young people and alumni from child welfare care an opportunity to discuss their needs and views.<sup>64</sup> More than 280 young people participated at the provincial and national level. A full description of the consultation process and detailed findings are available in the final report on the CCRC website.<sup>65</sup> Following is a summary of the key issues and recommendations identified through this process and contributions from others involved in child welfare across the country.

## Equitable Treatment

Young people in care identified the experience of being treated differently from others as a major concern. They shared daily experiences of being treated differently because they were in the child welfare system. They spoke about being singled out at school by teachers and being excluded from school activities because of their status. They shared examples of being assessed on the basis of risks rather than on what they could contribute. Others shared the embarrassment they experience when family members are required to complete criminal record checks to meet with them or when they are required to ask their employer for a letter verifying their hours of work. Social stigma and the negative image of child welfare make it difficult to fit in the community and find friends.

The experiences of young people reveal inconsistencies in laws and agency policies, as well as different interpretations of the rules by persons in authority. These lead to inequitable treatment between youth in care and between youth in care and other people of similar age. At a systemic level, concerns about equitable treatment arise from the following factors: different maximum ages for protection intervention, different grounds for protection services, different levels of child participation within the court processes and administrative decision-making processes for children who may need protection, marked deviations in child protection caseloads, and different levels of budgetary allocation to child protection services.

International *Guidelines for the Alternative Care of Children*, based on the Convention on the Rights of the Child, were adopted in 2009.<sup>66</sup> In 2011 the UN Committee on the Rights of the Child adopted General Comment 13 on the right of a child to be free from all forms of violence. This interpretive guide to article 19 of the Convention addresses all aspects of child protection.<sup>67</sup> There has been no evaluation of how the different provincial/territorial laws and programs comply with these guidelines, which cover what provinces call substitute care (e.g. foster homes, group homes) and alternative care (e.g. kinship care). Using international guidelines across all provinces to review and strengthen existing systems could help to ensure equitable treatment of all children, with flexibility in specific programming to respond to the variety of needs across the country.

## Aboriginal Youth in Care

One high priority is the documented disparity in funding for Aboriginal child welfare services, compared to services provided to non-Aboriginal children in similar circumstances. The issue of inequitable funding for preventive and early intervention assistance for Aboriginal children, documented by the Auditor General in 2008, has not been resolved. The Canadian Human Rights Tribunal recently dismissed a complaint on the grounds that a comparison cannot be made between federal and provincial services under *Canada's Human Rights Act*. Under the Convention, however, Canada has made a commitment to equitable treatment of all children.

Aboriginal youth in care reported additional challenges they faced while in care. They stated that being placed into care and frequent placement moves in care separates young people from their immediate families and extended family and friends, as well as their cultural heritage and traditions. Many Aboriginal youth in care report feeling disconnected from their culture, which makes it difficult to develop their own identity.

## Immigrant Children and Youth in Need of Protection

Young people who came to Canada and then found themselves in need of child protection spoke about direct and indirect discrimination they experienced in new communities, including school systems and care placements. Some stated they had been placed into homes with little or no understanding of their culture, contrary to Convention article 20(3), which requires that “due regard” be paid to “the child’s ethnic, religious, cultural, and linguistic background” in alternative care placements. Some reported that they entered care with a strong sense of their cultural heritage and left it feeling disconnected and without a clear sense of their identity.

Some shared that they left the care system without clear legal status, because caregivers and social workers did not pursue it on their behalf. This results in limited access to services after they leave the system.

## Knowing and Exercising Rights within Child Welfare Systems

Young people in care indicated that often they are not informed about their rights, the options available to them for support or protection of their rights, and ways they can have a voice in decisions that affect them. Youth reported that decisions are generally made for them and not with them, sometimes with no explanation. Young people want their caregivers and social workers to ask for their views on options for their care, to be transparent with them about why decisions are made, and to facilitate access to appeal processes of decisions made for them. This includes participation in plans of care, placement options, family reunification, or continued contact with biological or adoptive family members when possible. To implement the Convention, these rights should be legislated as a mandatory standard for all child welfare agencies and services intended for young people in care.

## Transitions to Independence, Permanence, and Connections to Family

The age at which young people are released from child welfare care varies from 16 to 19 years old across Canada. Forms of extended support up to age 21 are available in some provinces but not accessible to all young people. Alumni from care identified that many young people have not been prepared well to manage a sudden transition from heavily regulated residential care settings to independent living at a young age. The relationships they established (e.g. with caregivers and social workers) are often abruptly ended, leaving them without a supportive adult or access to a healthy, supportive social network. In many cases no one had taken time to teach them basic life skills, such as money management and applying for university or jobs, skills that are essential for independent living. The lack of support for transition to adulthood disadvantages youth in care compared to other young people who often can count on their families for support in searching for a job, continuing their education, housing, and forming adult social relationships.

Permanence in planning for placement of children who need alternative or substitute care should be a top priority. A child's right to grow up with a supportive family environment, when the birth or adoptive family cannot fulfill that role, is one that is often overlooked for young people living in child protection environments. Adoption is an underutilized option in Canada, and few jurisdictions have invested in the public awareness and planning needed to make it a viable option. At the same time, young people stated that permanence should not be narrowly defined as adoption, which is not always the preferred or realistic option; failure to consider other options can leave young people with no choice but moving out on their own. Extended care and on-going mentorship were identified as priorities for greater consideration, including mentorship by alumni from care.

Young people expressed that establishing or maintaining family connections should be considered a right. Family, in their view, extends beyond biological or adoptive parents to siblings, grandparents, extended family, mentors, elders, and supportive peers. Negative family dynamics, moving placements and schools, changing workers, unaddressed emotional and mental health issues, stigma, and poor social skills are among the barriers that leave young people without healthy support networks. Some young people also reported that they had been left out of foster family activities or school trips, which resulted in feeling abnormal, rejected, and unwanted.

## Protection from Mistreatment and Access to Mental Health Services

Young people shared experiences of neglect and abuse within the child welfare system, including being locked in their room, being separated from family members as punishment, getting lower quality food than the rest of the foster family, being placed in overcrowded and unsafe situations, being treated differently than biological children in the same household, and being bullied without recourse to help. Many do not know how to access advocates or avenues to address mistreatment. Too often, caseworkers and others in authority roles do not take their concerns seriously and some expressed fear that getting help from an advocate would result in retribution from caregivers. They identified a

lack of monitoring of quality of care and shared stories of peers who fell through the cracks of child welfare, got into trouble with the law and ended up in the criminal justice system.

The fact that physical punishment is condoned by law in Canada makes it more difficult for social workers and child protection workers to promote more effective forms of discipline to parents and other caregivers, when children misbehave. Other countries that have legislated the right of children to be free from all forms of violence, including physical punishment, have seen an increase in the use of more effective forms of discipline.<sup>68</sup>

In addition to physical safety, young people also reported lack of access to appropriate mental health care in a timely and youth-friendly manner. They identified long waiting lists, services intended for adults, and lack of choice in treatment as major concerns. National studies have shown that young people in care are more likely than their mainstream peers to be prescribed pharmaceutical medication or to be chemically restrained. They are often misdiagnosed and/or overmedicated as their 'behaviours' are misinterpreted as serious mental health disorders. Due to frequent moves and lack of training for caregivers, young people in care who have been prescribed psychotropics are not adequately monitored and rarely reassessed.<sup>69</sup> In addition, substitute caregivers are more likely to call in law enforcement, bringing these children into conflict with the law for behaviours that would not draw the same response for children living in intact families.

Current policies to assess and safeguard the mental and emotional health of young people in care should undergo a national review, including the use of chemical treatments for mental health care and effective alternatives. It should also identify best practices for training caregivers, regular assessments, and tracking tools to monitor individual cases.

## Access to Education

Young people identified significant barriers that disrupt academic achievement. National studies indicate that young people in child welfare are twice as likely to drop out of high school and even less likely to make a successful transition and graduate from post-secondary education, compared to their peers. Placement moves require them to adjust to new schools and peer groups with less continuity in their education. Young people also reported limited opportunities to participate in extra-curricular activities due to strict child welfare policies.

Barriers to post-secondary education after release from child welfare include lack of resources, difficulty navigating all the factors of independent living, self-esteem, pressure to complete their studies by age 21, and stigmas surrounding child welfare. Lack of knowledge about scholarships and student loans and limited support from social workers or other adults make it difficult for alumni from care to manage all the critical components for academic success.

## Prevention

Preventive and early intervention measures require more attention across Canada. Governments, as duty-bearers for the rights of children, cannot see their role as last resort. The Convention, which

recognizes the role of the family and the responsibilities of parents, puts considerable emphasis on the state's duty to support children and their "families," to enable the healthy development of all children within their jurisdiction. Preventive social services for families with children need to be higher priority in programming and provincial and territorial budgeting for child welfare.

## Summary

In general, young people stated that they want to see fair and consistent policies for themselves, their peers, and future children in care. They also want to be active participants in decisions that affect them directly, changes within the system, and education initiatives for adults who work with children in care and the general public. They want to share stories of success and hope.

To make this happen, young people recommended that all stakeholders, including youth in care networks, child and youth advocates, child welfare agencies, and government officials, work together to identify and implement good practices that are consistent with the general and specific provisions of the Convention.

## RECOMMENDATIONS

ACTION	ACTORS (Lead and Main Actors)
<p><b>Immediately resolve the inequitable funding dispute with regard to child welfare services for First Nations children under federal jurisdiction and take other necessary steps to ensure equitable treatment of all Aboriginal children in relation to non-Aboriginal children.</b></p>	<p>Aboriginal Affairs and Northern Development Canada Justice Canada</p>
<p><b>Convene a meeting of federal, provincial, and territorial social services ministers as soon as possible (one has not been held since 2006) and begin a national review of child welfare standards and practices to ensure equitable treatment for all children and protection of their Convention rights, with particular attention to mental health services. Use the international <i>Guidelines for the Alternative Care of Children</i> and General Comments 11 (rights of indigenous children) and 13 (child protection) as a basis for the review. The review would also identify and expand good practices in care, training, and monitoring outcomes.</b></p>	<p>Human Resources and Skills Development Canada Provincial/territorial departments of social services The review process should include provincial/territorial child and youth advocates, networks of youth in care, and non-governmental agencies who work with youth from care in the community</p>

ACTION	ACTORS (Lead and Main Actors)
<p><b>Engage urgently in dialogue with Aboriginal community leaders to identify immediate practical steps to reduce the over-representation of Aboriginal children in child welfare in all provinces. Focus attention on the reality that a high number of Aboriginal children leave the child welfare system without attachment to a supportive, substitute "family." Follow up with longer-term, more sustainable good practices.</b></p>	<p>Aboriginal Affairs and Northern Development Canada Provincial/territorial departments responsible for child welfare</p>
<p><b>Give top priority to permanency planning for children in alternative care, including transition planning for young people who leave the child welfare system without attachment to a substitute family or other supportive network in place.</b></p>	<p>Provincial/territorial departments responsible for child welfare Aboriginal Affairs and Northern Development Canada Human Resources and Skill Development Canada</p>
<p><b>Conduct annual provincial/territorial and national report card consultations on the rights and well being of young people in care.</b></p>	<p>Collaboration between national and provincial/territorial networks of youth in care, the CCRC, the Canadian Council of Child and Youth Advocates, and provincial/territorial departments responsible for child welfare</p>

## C PROTECTING THE RIGHTS OF IMMIGRANT AND REFUGEE CHILDREN

### Introduction

Non-citizen children in Canada are denied full protection of their rights because of their status. Children who have neither permanent residence nor citizenship are denied many economic and social rights, because access to many services and entitlements is tied to immigration status. Even some children who are citizens suffer discrimination because of the immigration status of their parent.<sup>70</sup> Immigrant and refugee children also experience the impact of immigration policies that are not designed for children and that do not always conform to the Convention on the Rights of the Child.

### Best Interests of the Child in Immigration Processes

In 2002, the *Immigration and Refugee Protection Act* came into effect, introducing for the first time an obligation for decision-makers to take the 'best interests of the child' into consideration in various contexts.<sup>71</sup> The new act also stated that it is to be "construed and applied in a manner that [...]"



complies with international human rights instruments to which Canada is signatory.”<sup>72</sup> This of course includes the Convention on the Rights of the Child.

While these developments are positive, there remain many troubling gaps:

- The Act calls for the ‘best interests of the child’ to be considered only in four specific contexts, rather than in all decisions affecting children, as required by the Convention. The Canadian government regularly argues in court that the ‘best interests of the child’ should not be considered in situations other than those specified in the Act.<sup>73</sup>
- While the Convention states that children’s best interests must be a “primary consideration,” the Act only requires that they be “taken into account.”
- Even where best interests are taken into account, decision-making is extremely inconsistent due to persistent problems in the understanding and application by many immigration officers of ‘best interests of the child’. The evaluation of children’s best interests in humanitarian and compassionate applications is sometimes confused or incomplete, incorrectly weighed or even completely absent (particularly in decisions at overseas visa offices).<sup>74</sup>

## Detention of Children

Contrary to the assertion in Canada’s *Third and Fourth Reports* on the Convention on the Rights of the Child, significant weight is not always given to the ‘best interests of the child’ when detention is being considered.<sup>75</sup> In fact, children – many of whom are asylum-seekers – are regularly detained in Canada, sometimes for many weeks, and not only in exceptional circumstances.

- Children are frequently detained, even though there are no particular reasons for this action. Sometimes there are obvious alternatives that are not explored, such as staying with a family member already in Canada. After children are detained, immigration officials do not always give priority to resolving their cases. The Immigration and Refugee Board has sometimes criticized the lack of urgency accorded to these cases by officials.
- Children are sometimes arbitrarily detained on the basis of identity, because of a shortcoming in the Act. The law gives the government an unreviewable right to detain individuals based on the conclusion that a person’s identity has not been satisfactorily established.<sup>76</sup>
- In practice, children are frequently in detention with a parent even though they are not legally detained. The child may nevertheless accompany the parent into detention, because that is the best or only option available. Because the law does not list ‘best interests of the child’ among the factors to be considered in the review of detention of adults, arguments based on the best interests of children in detention, even of those who are not legally detained, are routinely dismissed.<sup>77</sup>

## Separated Children

In 2003, the UN Committee on the Rights of the Child expressed concern at the absence in Canada of a national policy on unaccompanied asylum-seeking children.<sup>78</sup> There is still no national policy. Reliable statistics are not even available. Treatment of these children varies widely across the country, in part due to restrictive age-eligibility rules applied by some provincial youth protection services. There is also no standardized system for ensuring that a designated representative is appointed from the time

the child first seeks asylum. The lack of coherent policy for separated children leaves child victims of trafficking unprotected. Canada also still lacks a clear policy to ensure that children are not removed to a situation where they may be unsafe.<sup>79</sup>

## Family Reunification

Despite repeated calls by the UN Committee on the Rights of the Child to Canada to meet its obligations for timely family reunification, delays in and barriers to family reunification continue to be a major problem, affecting thousands of refugees and immigrants.

- Processing of immigration applications affecting children’s family reunification often takes years. The waiting periods for refugees seeking reunification are particularly long, and disproportionately long in certain parts of the world. In mid-2009, half of the cases of refugee dependants processed at the Nairobi visa office were taking more than 23 months, as compared to an average 14 months globally.<sup>80</sup> Since then, processing has become even slower in Nairobi, rising to 27 months.<sup>81</sup>
- A new category of “Excluded family members” (Regulation 117(9), (d), adopted in 2002) has had devastating effects on children denied reunification with their parents.<sup>82</sup>
- The law does not provide for family reunification for unaccompanied refugee children.<sup>83</sup>
- In August 2004, the government eliminated the concurrent processing of dependants of persons accepted on humanitarian and compassionate grounds. This means that children, including separated children, must wait longer to be reunited with parents who are accepted in Canada on humanitarian grounds.<sup>84</sup>

## Statelessness

In 2009, changes made to the Canadian *Citizenship Act* had positive and negative impacts for children. Children born to Canadian parents in U.S. hospitals close to their Canadian residences can claim Canadian citizenship more easily than previously. However, new limits on succession of Canadian citizenship increase the risk of creating stateless children among those born to Canadians outside of Canada. This contravenes the right to acquire a nationality in article 7 of the Convention. While these changes were made to increase the value of Canadian citizenship, they prevent some children born to Canadians from claiming their basic right to a nationality. If a child is born outside of Canada, to a Canadian who was born abroad to Canadian parents, the child is not automatically eligible for Canadian citizenship. In many countries, children of foreigners are not eligible for citizenship in the country they are visiting. Such children may not be able to travel because they are stateless and they may not be able to access essential services because of their status. Canadian professionals working abroad are experiencing this problem. The children of government officials or military personnel are exempt from the restrictions that apply to other Canadians, leading to discrimination based on the employment status of parents.<sup>85</sup>

Canada has not ratified the 1954 Convention relating to the Status of Stateless Persons.

“I applied for a job when I arrived in Canada but I need Canadian experience. How can I get that without a job? I have been here for three years but I haven’t worked.”

CCRC Youth Consultation, August 24th, 2011

“My parents were immigrants and one of their struggles was trying to get a job while having someone to look after my brother and me. They didn’t have money to put us in a daycare and sometimes they had to leave us home alone and that causes safety issues. A free daycare for refugees and immigrants would be good.”

CCRC Youth Consultation, August 24th, 2011

## Access to Services

Children who arrive in Canada as landed immigrants may not immediately qualify for health care coverage in some provinces, including the largest province of Ontario, where they are subject to a three month waiting period. Families whose children become ill during this period either seek healthcare at great financial cost to the families, often putting them in debt for decades, or avoid seeking treatment altogether, which often results in more serious health consequences.

All children who arrive in Canada as landed immigrants should receive immediate coverage for health care.

Finally, children in all provinces/territories have a legal right to attend school even if they or their parents do not have immigration status in Canada. In practice, however, some parents experience obstacles to the enrolment of their children, fear of repercussions if they identify themselves to a local school, and lack of information about the right to attend school. There are examples of children being denied enrolment.<sup>86</sup> Training of school officials, appropriate protocols for enrolment, and public awareness can help to ensure children are not denied an education because of the citizenship status of their parents.

## RECOMMENDATIONS

ACTION	ACTORS (Lead and Main Actors)
<b>Apply the ‘best interest of the child’ principle in all decisions affecting children under the <i>Citizenship and Immigration Act</i>. Follow established guidelines, such as the <i>UNHCR Guidelines for Determination of the Best Interest of Children</i>, with clear criteria for evaluation and follow-up action, to achieve consistent application.</b>	Citizenship and Immigration Canada
<b>Train all immigration officials who may come into contact with children in the use of the guidelines. Deal with cases involving children without delay.</b>	Public Safety Canada
<b>Establish an automatic review process when children are detained to help ensure that detention is only used in exceptional circumstances in their best interests, when there is no other alternative.</b>	Citizenship and Immigration Canada Public Safety Canada
<b>Develop and implement a national strategy for separated children, as recommended in the second review.</b>	Citizenship and Immigration Canada

ACTION	ACTORS (Lead and Main Actors)
<b>Ensure access to education, health, and social services for all children, regardless of the status of their parents. Train health care, social service providers, and school administrators on their legal obligations.</b>	Citizenship and Immigration Canada Human Resources and Skills Development Canada Provincial/territorial departments of social services
<b>Amend the <i>Citizenship Act</i> to prevent the creation of stateless children.</b>	Citizenship and Immigration Canada

# D REALIZING THE RIGHTS OF CHILDREN WITH DISABILITIES

## Introduction

The rights of children with disabilities are explicitly recognized in the Convention on the Rights of the Child provides both universal protection of the rights of children with disabilities and special recognition (article 23) of the needs of children with disabilities in realizing those universal rights. Despite progress in Canada – in legislation, theory and practice – the rights of children with disabilities are still not being fully realized.

This summary provides a snapshot of the situation of children with disabilities in Canada, and highlights recommendations from a more detailed working paper<sup>87</sup> Action on these matters is important because patterns of exclusion or inclusion begin in childhood.

## Children with Disabilities in Canada

- There are 202,350 children with disabilities under the age of 15 – of these, about 57% have mild to moderate disabilities and 43% have severe or very severe disabilities.
- Children with disabilities are twice as likely as other children to live in households that rely on social assistance as a main source of income.
- 19.1% of children with disabilities live in households that fall below the Low Income Cut Off, compared to 13.4% of children without disabilities.

“Schools are doing a good job at recognizing and adapting to their needs, physically more than mentally. Students are starting to take action like the Best Buddies program and events in schools where students interact with students with disabilities. Some schools still don’t have any initiatives and any disabled children are kept in a separate section of the school.”

CCRC Youth Consultation, August 24th, 2011

*“I’m talking about wheelchair access. It’s really good in my school. I think in my school we’re just starting to identify this and we started a group called Stop the Stigma. We’re developing more respect and understanding for physical disabilities but don’t have much for mental disabilities.”*

CCRC Youth Consultation, August 24th, 2011

- Children with disabilities are over-represented in provincial/territorial child welfare systems.
- Children with disabilities are more than twice as vulnerable to violence and abuse as other children.
- Almost 55% of children with disabilities who need aids and devices do not have access to them. Cost is cited as the most common reason.
- 40% of children with disabilities experience daily difficulties in everyday life.
- Of the many parents who report needing additional help, nearly three-quarters (73.5%) cite cost as the reason they cannot get it.
- More than one-third of parents report having out-of-pocket costs for getting the assistance they need.
- 21.5% of families report that child care services or programs had refused to provide care for their child.
- Due to their child’s disability, parents report:
  - o Having to work fewer hours (38.4%) or change their work hours (36.5%)
  - o Having not taken a job (26.4%)
  - o Having to quit work (21.6%)
  - o Turning down a promotion (19.7%).
- Mothers are most commonly the main person to be impacted (64.1%).

## UN Convention on the Rights of Persons with Disabilities

*“My school had no interaction between abled and disabled students and I was yearbook editor and was told to take pictures of them out of the yearbook because a lot of them were in foster care. I felt like we were erasing them from the community and I fought it and we managed to get some photos in the yearbook when they had permission from their parents and we got a page for Best Buddies. There’s a huge divide. They’re kept very isolated.”*

CCRC Youth Consultation, August 24th, 2011

In December 2006, the UN General Assembly adopted the UN Convention on the Rights of Persons with Disabilities (CRPD). Canada ratified the CRPD in March 2010. The CRPD is the first legally binding international treaty relating to disability. It marks an official shift toward seeing disability as a human rights issue and firmly positions disability within a progressive social model. The CRPD provides a deeper understanding of disability and what is required to ensure that the rights of children with disabilities are realized in progressive ways.

*“A lot of people don’t understand. Teachers don’t understand. For instance, my brother has dyslexia and his teacher doesn’t understand what it is.”*

CCRC Youth Consultation, October 2, 2011

*“My cousin goes to a school for disabled students and he has everything, a counselor, bus that picks him up, food served to him. His school is really good but it’s only for disabled students. My cousin has various mental disorders and growing up he was locked inside his house. His parents were ashamed and thought he was just a weird kid. Even now, he won’t talk to people about how he feels. I think he would be so much better if parents had treated him well. I used to tutor him when he was little and try and get him to talk to me. Family members have a huge impact on these children and they need to be educated.”*

CCRC Youth Consultation, August 24th, 2011

## Violence and Abuse and the Right to Life, Survival and Development

Children with disabilities are disproportionately represented among victims of child maltreatment. Estimates suggest that children with disabilities are two or more times more likely to be victims of child abuse than children without disabilities. Despite an overall drop in homicide rates among the general population, there appears to be an increase in homicide and filicide rates against people with disabilities. Additionally, there are questions about systemic discrimination against children with disabilities in relation to accessing an equal standard of health care, especially for those with significant support needs. Quality of life arguments are often found at the heart of complex ethical issues related to health care for people with disabilities. Such assessments are subjective and vulnerable to negative assumptions and beliefs about life with disability.

## Inclusive Lifelong Learning

Lifelong patterns of inclusion are established in early childhood education programs, preschools, classrooms, and on neighbourhood playgrounds. Research reveals that children with disabilities who are included in their early years have better outcomes for inclusion as adults. When children and youth with disabilities grow and learn alongside their peers, they are more likely to continue in education, get jobs, have incomes above the poverty line, and be included and valued in their communities. There are still incidents, however, where schools and school boards inappropriately separate children with disabilities or fail to provide appropriate support.

## Supports to Families

The Convention recognizes that children should be supported to live at home with their families and that families are entitled to the supports they require to raise their children at home. Canada is doing a great deal to support families in this regard, but more is needed. In addition to improved disability-specific supports and services for families, one of the best supports for families is to ensure that the rights of children are realized in inclusive ways. Access to services – health care, education, sports and recreation – provides significant support for families who have a child with a disability to live typical lives.



*“I’ve heard of some parents who pay doctors for a disability diagnosis for their children who aren’t doing well. It is an excuse for that.”*

CCRC Youth Consultation, October 2, 2011

## RECOMMENDATIONS

ACTION	Actors (Lead and Main Actors)
<b>Interpret children’s rights under the Convention in ways that are consistent with the Convention on the Rights of Persons with Disabilities. Incorporate a disability lens in monitoring all aspects of children’s rights and reporting under the Convention.</b>	All government officials at all levels, agencies who work with children with disabilities
<b>Develop a protocol and patients’ bill of rights, in collaboration with disability groups, to ensure non-discrimination in access to and provision of health care and medical supports.</b>	Health Canada
<b>Undertake a judicial review of all maltreatment and murder cases involving children with disabilities, with a mandate to make recommendations for legal protection and equitable treatment.</b>	Justice Canada
<b>Develop and implement a strategy to promote and advance quality inclusive lifelong education in keeping with article 24 of the CRPD. Areas for special attention include barriers created by school boards to exclude children with disabilities, and methods of discipline used within schools, such as isolation and physical and chemical restraints.</b>	Council of Ministers of Education Provincial/territorial departments of education
<b>Review eligibility criteria for students with disabilities to ensure that all students with disabilities are able to access and benefit equally from federal funding opportunities for post-secondary studies.</b>	Human Resources and Skills Development Canada Provincial/territorial departments responsible for post-secondary education

*“It bothers me that people say things like: ‘You’re retarded.’ We need to change the term.”*

CCRC Youth Consultation, October 2, 2011

# E PROTECTING THE RIGHTS OF YOUNG SOLDIERS: RECRUITMENT AND REHABILITATION

## Introduction

Canada was the first nation to ratify the Optional Protocol on the Involvement of Children in Armed Conflict (OPAC), in 2000. In accordance with article 1 of the OPAC, Canada amended the *National Defence Act* to prohibit the deployment of anyone under the age of 18 for direct participation in a zone of hostilities. The minimum age for voluntary recruitment was set at age 16, with the conditions that parents give consent and the young person is fully informed.

*“Young people said that Canada should “not draft children (under 18 years of age)...not be promoting war and violence in school...not glorify war in the eyes of children.”*

CCRC Youth Consultation, September 24, 2011

## Active Recruitment of Under-18s

Following Canada’s first report on the OPAC to the UN Committee on the Rights of the Child, the Committee urged Canada to increase its age for voluntary recruitment, and to give priority to older recruits. There has been no change in policy. In recent years, the Department of National Defence (DND) has implemented an aggressive recruitment campaign, adding significant numbers to the armed forces.<sup>88</sup> The number of under-18s, however, has decreased, compared to the last reported numbers in 2007. As of December 31, 2010, there are 52 regular force members under the age of 18 and 1,167 reserve force members.<sup>89</sup> On July 5, 2007, for comparison, there were 139 under-18s in the regular forces and 2,194 under-18s in the reserves.<sup>90</sup>

At its first review under the OPAC, Canada received a recommendation to prepare and distribute a youth-friendly version of the OPAC to promote fully informed youth decision-making in relation to recruitment. With financial support from the government, the CCRC, UNICEF Canada, and YOUNG CANADIAN (YOUNG) developed a youth friendly version of the OPAC in English, French, and Aboriginal syllabics, for distribution through civil society groups, schools, and DND. It has not been included in the standard package DND gives to young people as part of recruitment campaigns.

Of continuing concern in relation to recruitment strategies are programs that target the recruitment of Aboriginal youth or use high school premises and course credits to target under-18s. The Aboriginal youth recruitment programs include the Aboriginal Opportunities Leadership Year Program, Bold Eagle, Raven, Black Bear, and the Canadian Forces Aboriginal Entry Program. The Aboriginal Opportunities Leadership Year Program, for example, offers free tuition and books to armed forces applicants who may otherwise have limited access to post-secondary education. These strategies are pursued with the objective of increasing diversity in the armed forces, but risk enticing youth to less seriously

“A friend in cadets thought it was so cool to shoot guns, fly an airplane. Does he really know what the military involves? He thinks he can get out later.”

CCRC Youth Consultation, October 2, 2011

consider the risks of employment in the armed forces. Targeted recruitment programs need to ensure that the rights of Aboriginal and socioeconomically marginalized youth are fully respected and other career options are equally presented to young people who are looking for advancement opportunities.

DND’s Operation Connection program has led to an increase in the number of active recruiters across the country. High schools are frequently asked to host recruitment fairs that provide young people under the age of 18 with an attractive picture of life in the military, such as international travel and free education, without providing full information about all aspects and potential impacts of the job. There are no clear standards as to what constitutes a young person being fully informed before signing the contract.

DND has worked with some high school boards to develop military co-operative learning programs. Students can earn high school credits by joining the military reserves and participating in their training programs, which in some cases include weapons training on the use of grenades and automatic rifles.<sup>91</sup> Weapons training can pose security risks and the violent subject matter to which youth are exposed during training may cause emotional and psychological harm. Furthermore, at least some of the school programs involve the student participants completing a full recruitment application process.

Young people at age 16 are eligible to enrol in the Regular Officer Training Program as an Officer Cadet, a program offered through the Royal Canadian Military College. This program offers military training, occupational training, and academic certification. Because it is attractive as free education, care is needed to ensure that young people understand the long-term obligations and financial obligations that go along with the education.

## Rehabilitation of Child Soldiers

The high profile case of Omar Khadr presented Canada with a call to implement article 6 of the OPAC, which calls for the reintegration of child soldiers into normal society. Omar Khadr was taken from Canada to Afghanistan at age 11 by a parent. At age 15 he was captured by American forces, accused of murder, tortured to extract information, and sent to Guantanamo Bay, where he was later tried by a United States military tribunal, without due process or special consideration as a minor. Faced with an unfair trial, he pled guilty and, at age 22, is currently serving his sentence in Guantanamo Bay, awaiting appeal processes.

Throughout this process, Canada refused to consider him as a child soldier and rejected appeals to apply article 6 of the OPAC in this case. The Supreme Court of Canada declared that Omar Khadr’s rights were violated, including the lack of attention to his best interests as a child. The government still refused to implement article 6.

Subsequently, Canada’s Foreign Minister announced that Canada would also discontinue applying

the designation of child soldiers for under-age combatants in selected countries where terrorism is involved. This is a serious erosion of the children’s rights protections in the OPAC.

Recently there have been reports of children being taken from Canada to Somalia for deployment as child soldiers. More active engagement with affected communities in Canada is needed to prevent such recruitment.

## Treatment of Under-age Detainees in Afghanistan

In November 2010, The Canadian Broadcasting Corporation obtained secret documents showing that Canada had detained Afghan children, held them for interrogation, and transferred them to an Afghan security unit that had been accused of torture, without any assurance that they would be treated differently as children.<sup>92</sup> The information, obtained through *Access to Information*, indicated that Canadian policy dictated that juveniles be routed through Afghanistan’s National Directorate of Security, for the purpose of questioning, rather than be immediately transferred to a civilian child protection agency. A Canadian government spokesperson stated that responsibility to protect their rights rests with the Afghan government.

In 2006, the Committee on the Rights of the Child had recommended that Canada take steps to protect the rights of underage detainees:

The Committee recommends that the State party ensure that - when detained persons under the age of 18 captured in areas of armed conflict are transferred to other national authorities - this transfer occurs only as long as there is a reason to believe that their human rights will be respected and as long as the State party is satisfied that the receiving State is willing and able to apply the Geneva Conventions. The State party should also provide specific information in this respect in its next report.<sup>93</sup>

Full information and accountability for what happened to these children should be disclosed prior to the next review.

“For four years in university or two years in school, you get a “semi-free education”. But it is a little bit of a trick because the military is trying to buy you with an education.”

CCRC Youth Consultation, October 2, 2011

## Admission of Former Child Soldiers as Refugees

Changes made to the *Immigration and Refugee Protection Act* in 2002 make all former child soldiers ineligible for admission to Canada as refugees or immigrants, even when agencies working with young people determine that relocation to Canada, with local support, would be in the best interests of particular young persons. This is inconsistent with article 7, which requires international cooperation to help countries implement the provisions of the OPAC.

“I joined air cadets. I didn’t stay very long, a few months. The coolest was shooting pellets but we didn’t do it very much. I lost interest in following orders. It was not hard to leave.”

CCRC Youth Consultation, October 2, 2011

## International Development

Through the Canadian International Development Agency (CIDA), Canada provides assistance to programs in a number of countries, such as Colombia and Democratic Republic of the Congo, to implement the OPAC. In relation to the Security Council, Canada continues to be active in the Friends of Children and Armed Conflict, work together on implementation of Security Council resolutions relating to children and armed conflict.

“It is quite a good job if you don’t get killed.”

CCRC Youth Consultation, October 2, 2011

### RECOMMENDATIONS

ACTION	ACTORS (Lead and Main Actors)
<b>Give greater priority to recruiting over-18s, cease holding recruitment events at high schools and other locations that target youth under the age of 18, and cease co-op programs that give high school credit for military training programs.</b>	Department of National Defence and the Canadian Forces
<b>Hold Canada accountable for its lack of compliance with the OPAC in the case of Omar Khadr, and insist that Canada make amends as much as possible through facilitating Khadr’s return to Canada with a reintegration program that is consistent with the Paris Principles for the rehabilitation of children associated with armed forces.</b>	UN Committee on the Rights of the Child
<b>Provide information about steps taken to protect the rights of under-age detainees in Afghanistan, in response to the recommendations received after Canada’s first review under the OPAC.</b>	Department of Foreign Affairs and the Department of National Defence
<b>Conduct a review to ensure that defence policies, immigration policies relating to children involved in armed conflict, international aid policies, and foreign policy positions fully comply with the OPAC.</b>	Auditor General of Canada

# 6 Children’s Rights and International Development



## CHILDREN’S RIGHTS AND INTERNATIONAL DEVELOPMENT

The Canadian International Development Agency (CIDA) announced a new strategy entitled *Securing the Future of Children and Youth* in May 2010. It replaced the five-year Action Plan on Child Protection, which expired in 2005. (This previous plan is highlighted in Canada’s combined *Third and Fourth Reports*). The new strategy provides a rationale for focusing on children/youth and identifies three priority areas for CIDA: improving child and maternal health, quality education, and safe and secure futures for children and youth.

While the Convention includes provision rights, which relate equally to the sectors of health and education, the CIDA strategy relegates children’s rights to the protection sector alone. Children’s rights should be taken into consideration in all three priority areas.

Missing from the strategy is an explicit focus on child and youth participation in the development and delivery of development programming. This is a lost opportunity because CIDA’s earlier Action Plan identified good participation practices that could have been scaled up in the next phase. Children are viewed primarily as recipients of services, not as development actors. There is no specific mention of strengthening mechanisms for implementing children’s rights in target countries.

As well as missing a systemic approach, the listed actions and outcomes in the strategy are very general. In order to achieve effective accountability, one of the primary features of rights-based approaches, the strategy requires more defined targets and mechanisms for on-going monitoring of progress.





While the strategy states that it complies with the *Official Development Assistance Act* passed by parliament in 2008, it fails to show how it complies with international standards in children’s rights, the second provision of the Act. There is no reference to the Convention, no recognition of the core principles, including participation, and no mechanisms for transparency and accountability, which are key elements in children’s rights.

With regard to the broader issue of international assistance, Canada continues to fall short of earlier commitments to allocate 0.7% of GDP for international assistance. Funding for international development will decline from 0.33% of GNI in 2010-11 to 0.28% in 2014-15.

## RECOMMENDATIONS

ACTION	ACTORS (Lead and Main Actors)
<b>Integrate children’s rights into all aspects of CIDA’s strategy for children.</b>	Canadian International Development Agency
<b>Ask CIDA to show explicitly how its new strategy for children complies with the Convention, including areas like health and education.</b>	UN Committee on the Rights of the Child
<b>Evaluate each of CIDA’s major country strategies through a children’s rights lens to ensure that all aspects of the development program respect the rights of children.</b>	Canadian International Development Agency

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This report by the Canadian Coalition for the Rights of Children is part of a continuous process to monitor Canada's progress in respecting, protecting and providing for children's human rights - universal standards for the treatment of children set out in the United Nations Convention on the Rights of the Child. Canada ratified the Convention in 1991. The United Nations Committee on the Rights of the Child will review reports by the Government of Canada and non-governmental organizations and advocates in 2012.

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