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## Paying Attention to Vulnerable Children

### 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>

*“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

## **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.

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.”

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*“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.”*

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- 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:
  - Having to work fewer hours (38.4%) or change their work hours (36.5%)
  - Having not taken a job (26.4%)
  - Having to quit work (21.6%)
  - 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.”*

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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.”*

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*“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.”*

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## 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.”*

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## 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.”*

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# 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.”*

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## 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.”

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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.”

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## 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.