



**The Canadian Council of Child and Youth Advocates' Alternative
Report to Canada's Combined Fifth and Sixth Reports on the
Convention on the Rights of the Child**

**CANADIAN COUNCIL OF
CHILD AND YOUTH ADVOCATES**

March 2020

Contents

Overview	2
Introduction	3
Ratify the Third Optional Protocol to the Convention on the Rights of the Child	6
Recommendation 1	9
Establish a national Children’s Commissioner and a national framework to protect and preserve CYAs and the effectiveness of their broad mandates	9
Recommendation 2	13
Recommendation 3	15
Supporting the Canadian Council of Child and Youth Advocates	15
Recommendation 4	17
Conclusion	18
List of recommendations	19
Recommendation 1	19
Recommendation 2	19
Recommendation 3	19
Recommendation 4	19

Overview

The Canadian Council of Child and Youth Advocates (CCCYA) welcomes the opportunity to present an alternative report to the Committee on the Rights of the Child (the Committee) in response to Canada’s combined Fifth and Sixth reports under the *United Nations Convention on the Rights of the Child* (UNCRC). The CCCYA is an association of children's advocates from across Canada who have mandates to advance the rights of children and youth and to promote their voice. Council members promote and protect children’s human rights, through the use of complaint resolution, advice to government, amplification of child and youth voice, and public education functions. As part of Canada’s last cycle of reporting, Council submitted a special report on child rights enforcement in Canada and Indigenous children.¹ Since that time, independent Advocates’ offices have been established in Nunavut² and Prince Edward Island.³ Existing Advocates have

¹ Canadian Council of Child and Youth Advocates, *Aboriginal Children and Youth in Canada: Canada Must Do Better*, http://www.cccya.ca/images/english/pdf/aboriginal_children_youth_advocates_position_paper_2010.pdf.

² CBC News, Sherry McNeil-Mulak Nunavut’s first child and youth rep, 9 June 2014, <https://www.cbc.ca/news/canada/north/sherry-mcneil-mulak-nunavut-s-first-child-and-youth-rep-1.2669309>.

³ Stu Neatby, Journal Pioneer, *PC Bill establishes independent child and youth advocate for P.E.I.*, 21 November 2019, <https://www.journalpioneer.com/news/local/pc-bill-establishes-independent-child-and-youth-advocate-for-pe-378851/>.

worked to improve child rights-based advocacy. Unfortunately, during the same period the Advocate's Office in Ontario was abolished and only some of its functions redirected to the provincial ombudsman.⁴ There remains no national Canadian Children's Commissioner and the Northwest Territories have no equivalent public institution to defend child rights.

The CCCYA limits this submission to four measures critically important to Canadian children's rights and wellbeing. We urge the Committee to strongly recommend to the Canadian government:

1. The ratification of the 3rd Optional Protocol to the Convention;
2. The establishment of a federal independent human rights institution for children, and of PT Advocates' offices fully in accordance with the Paris Principles in all provinces and territories;
3. Continued child welfare law reform with a focus on domestic incorporation of the UNCRC; and
4. Improved coordination for child rights enforcement between federal, provincial and territorial (FPT) governments, including through mechanisms such as the CCCYA and its recently concerted call for a national youth suicide prevention strategy.

Introduction

Canada's Fifth and Sixth reports do not meet the standard of reporting that Canadian children deserve. They appear as a glowing testimony to Canada's work on children's rights. However, people who work in protecting and promoting child rights may see the situation differently. It seems no one in Ottawa has a defined mandate for child rights implementation. There is no plan being executed between reports to the Committee. This situation is replicated in sub-national and local governments, with little coordination across services and levels of government. The CCCYA regrets Canada's lack of critical self-assessment after the Committee's prior Concluding Observations. Canada's report writers appear to lack a connection to the field that would inform their awareness of important developments.

The Committee's last Concluding Observations, at paragraph 12, states Canada's 2004 National Plan of Action "lacks clear division of responsibilities, clear priorities, targets and timetables, resource allocation and systemic monitoring." Paragraph 13 recommends Canada adopt a "comprehensive implementation framework" across all FPT governments with accountability mechanisms and the "human, technical and financial resources for... implementation, monitoring and evaluation." In response, Canada's Fifth and Sixth reports offers that FPT governments have worked since 2012 at various times and in various jurisdictions on a number of strategies affecting children including "gender-based violence, housing and homelessness, poverty reduction and early learning and childcare." Canada's report does not engage meaningfully with

⁴ Shawn Jeffords, The Canadian Press, *Jobs will be cut, one office closed as Ontario ombudsman takes on child advocate duties*, 22 February 2019, <https://globalnews.ca/news/4988500/jobs-cut-one-office-closed-ontario-ombudsman-child-advocate-duties/>.

the Committee and underscores the lack of a national framework for implementing children's rights.

Another shortcoming is in Canada's effort toward budgets for children. The Concluding Observations, under *Allocation of resources*, recommend Canada "establish a budgeting process which adequately takes into account children's needs at the national, provincial and territorial levels with clear allocations to children in the relevant sectors and agencies, specific indicators and a tracking system" with "strategic budgetary lines for children in vulnerable or disadvantaged situations". These processes exist in Denmark and elsewhere. Canada should address whether this process is being considered or not and why.

We acknowledge Canada has made some relevant efforts in this area. For example, the *Investing in Young Canadians* report from the 2019 federal budget partially responds to the Committee's budgeting process recommendation by considering the needs of youth aged 17 to 25. Similarly, the Budget 2019 Gender-based Analysis Plus Annex is a step towards following the Committee's recommendations. However, particular emphasis on the needs of children (i.e. under the age of 17) is strikingly absent. Budget allocations for children should receive the same scrutiny as those for women and youth.

Paragraphs 15 to 18 of Canada's reports omit important details. The New Brunswick Advocate has recommended a provincial children's budget since 2011. The reports only mention New Brunswick's Child Rights Impact Assessment (CRIA) process and say it affects the province's budget. This is misleading. New Brunswick's CRIA tool focuses on child rights impacts, not spending. CRIAs are not required for the Board of Management, the Cabinet committee which makes budget decisions. Canada should report on CRIA processes as part of the "legislation" or "independent monitoring" rubrics of the report, not under "resource allocation".

In paragraphs 24 to 32, Canada's reports fail to respond to the Committee's recommendation of adopting "a national and comprehensive data collection system." The reports list data collection efforts, none of which attempt to address the recommendation. They leave out important developments in Quebec,⁵ New Brunswick⁶, British Columbia⁷ and nationally.⁸ GlobalChild operates under the Committee's direction, with funding of \$1.2 million from the Canadian Institutes of Health Research, to develop a child-rights monitoring and reporting platform for States Parties to the UNCRC. As an emerging global standard for child rights data monitoring soon to be piloted in Canada and developed with federal government research funds, Canada's report should have mentioned it.

Canada's reports' "Dissemination and awareness-raising" section offers only another list of disparate efforts. It does not attempt to meet the recommendation, which asks for systems to promote the Convention among the public, professionals and children and to use on-line and

⁵ Observatoire des tous-petits, <https://tout-petits.org/>.

⁶ Available at the back of each year's State of the Child Report, <https://www.cyanb.ca/en/publications/annual-reports>.

⁷ GlobalChild, <https://onlineacademiccommunity.uvic.ca/globalchild/>.

⁸ UNICEF Canada, *Where Does Canada Stand?: The Canadian Index of Child and Youth Well-being, 2019 Baseline Report*, available at <https://oneyouth.unicef.ca/en/child-and-youth-well-being-index>.

other education initiatives to “integrate knowledge and exercise of children’s rights into curricula, policies and practices in schools.”

Noteworthy efforts do exist in this area, such as: UNICEF Canada’s Rights Respecting Schools model;⁹ the Canadian Bar Association’s establishment of children’s law sections and its Child Rights Toolkit;¹⁰ the Nova Scotia schools curriculum units on teaching the UNCRC; the PT Advocates’ collaborative efforts on Child Rights Education Week¹¹ every November since 2012 (partnering with groups like the Canadian Coalition for the Rights of Children¹² and Children First Canada¹³); and the Child Rights Academic Network’s Shaking the Movers¹⁴ process, which has existed since 2008 to teach Canadian children about their rights and rights-based advocacy. Improved government funding of these programs would go a long way to help meet the Committee’s recommendations at little cost.

The Training section of Canada’s reports also disappoints by mentioning only a number of unrelated events across Canada over the past decade, ranging from airport workers’ domestic violence training to Justice sponsored webinars on FASD youth. This is a weak response compared to the recommendation, which calls for an integrated national child-rights training strategy for all professionals, especially government and judicial officials and workers in health and social services. The integrated training is meant to focus on using the UNCRC in legislation, public policy, program development and accountability. If mentioning PT training initiatives, Canada’s reports could include important efforts such as the CCCYA’s yearly Summer Course on the Rights of the Child¹⁵; the Fondation Dr. Julien’s approach to social pediatrics in community and its broad child-rights assistance of children, families and health and education sector workers;¹⁶ and online child-rights training from the Canadian Bar Association, the Canadian Pediatric Society and the Canadian Association of Social Workers. Canada’s reports should focus on the recommendations and on important developments perceived by experts in the field.

Canada appears to lack expert analysis and knowledge about ground-level child-rights education and enforcement work across Canada. This speaks to the lack of coordination of effort in Canada between government and civil society in favour of child rights. There is a clear need for better

⁹ Overviewed in UNICEF Canada, *UNICEF Canada’s Rights Respecting Schools*, https://unicef.ca/sites/default/files/imce_uploads/UTILITY%20NAV/TEACHERS/RRS/DOCS/UNICEF_Canada_Dec_12_Update_on_Rights_Respecting_Schools.pdf. See also <http://rightsrespectingschools.ca/>.

¹⁰ Canadian Bar Association, The CBA Child Rights Toolkit, <http://www.cba.org/Publications-Resources/Practice-Tools/Child-Rights-Toolkit?lang=en-ca>.

¹¹ New Brunswick Child and Youth Advocate, Child Rights Education Week, <https://www.cyanb.ca/en/education/crew-national>.

¹² Canadian Coalition for the Rights of Children, <http://rightsofchildren.ca/>.

¹³ Children First Canada, <https://childrenfirstcanada.org/>.

¹⁴ Landon Pearson Resource Centre for the Study of Childhood and Children's Rights, Shaking the Movers, <https://carleton.ca/landonpearsoncentre/shaking-the-movers/>.

¹⁵ University of Moncton, International Summer Course on the Rights of the Child, <https://www.umoncton.ca/droitsdelenfant/en>.

¹⁶ Dr. Julien Foundation, Services for children - A unique approach, <http://fondationdrjulien.org/en/community-social-pediatrics/services-for-children/a-unique-approach/>.

data collection and child-rights monitoring. It is said the best time to plant a tree is thirty years ago. The second-best time is today.

Canada's follow-through on its commitment to child rights in ratifying the Convention nearly thirty years ago has been mediocre. Programmatic rights need a principled commitment to follow through with a plan and make regular progress through periodic reporting to the relevant treaty body. Some in Ottawa believe that a Gender-based Analysis Plus process is a sufficient tool to protect children's rights in federal legislation and policy development. Canadian Child and Youth Advocates say that Canada must do better and that when it comes to protecting children's rights as the Gender-based Analysis Plus process does not integrate a child rights perspective. While of value in assessing how diverse groups are impacted by policies, programs and budgets, it is not sufficient nor attuned to protection of the rights of the child.

The UN's guidelines for developing Human Rights Indicators invite governments to think about structural indicators, process indicators and outcome indicators when measuring their progress in human rights implementation.¹⁷ For governments that have made only small progress towards programmatic implementation, it makes excellent sense to begin with a commitment to meeting structural indicators of success. It is only once the legal and institutional foundations for child rights implementation are in place, that policies and programs can be developed that will guarantee, protect and give meaning to child rights and provide children with the equal opportunities and outcomes they deserve. The four measures proposed above form a solid basis for continued improvement in fulfilling child rights.

Ratify the Third Optional Protocol to the Convention on the Rights of the Child

Canada has made positive contributions to the development and ratification of the UNCRC in the past, co-chairing the UN General Assembly meeting when the UNCRC was opened for ratification, strongly supporting the push for universal ratification and being an early adopter of the UNCRC and its first two Optional Protocols.¹⁸ However, Canada's response to the Third Optional Protocol is lacklustre. Canada has had more than eight years to sign the Optional Protocol on a communications procedure since the UN adopted it in 2011. We must not delay child rights enforcement any further.

Children deserve to have their fundamental human rights taken seriously. The UNCRC is the last core human rights treaty to include a right of individual petition.¹⁹ Already 46 States have ratified or acceded to the Third Optional Protocol and a further 18 have signed it, including many

¹⁷ Office of the United Nations High Commissioner for Human Rights, *Human Rights Indicators: A Guide to Measurement and Implementation*, 2012, <https://www.ohchr.org/EN/Issues/Indicators/Pages/documents.aspx>, at 33-38.

¹⁸ The McLeod Group, Canada, Human Rights and the United Nations, 2015, <https://mcleodgroup.ca/wp-content/uploads/2015/05/McLeod-Group-Policy-Brief-7-Human-Rights.pdf>.

¹⁹ Christian Whalen, *The UNCRC's Third Optional Protocol on a Communications Procedure: Giving Voice to Children* in *Promotion et Défense des droits de l'enfant: Enjeux théoriques, pratiques et philosophiques*, Niang, F. and Bernard F., editors, Global Studies Institute, University of Geneva, Geneva, 2013, at 93-104.

of Canada's peers among advanced liberal democracies.²⁰ Canada recognizes the rights of women,²¹ racial minorities,²² disabled persons,²³ and indeed all Canadians²⁴ to challenge their governments in international fora for violations under human rights treaties. Canada's failure to afford its children the same right denies their equality, access to justice and security of the person.

Children have a right to be heard at the international level. Canada cannot claim to be a human rights defender while denying this to its most vulnerable citizens. The 2007 report from the Senate Committee on Human Rights, *Children: the Silenced Citizens*, highlights the costs of this violation which ignores Canadian children's untapped potential and keeps them marginalized in decision-making.²⁵ To be a human rights defender, Canada must lead in such matters by adopting international human rights enforcement mechanisms early.

Canada weakens the rule of law and global human rights enforcement when it denies such a foundational element. Canadian Child and Youth Advocates understand how important it is to help children speak up, and to bring forward complaints. National human-rights enforcement mechanisms are not fool-proof. The Sandra Lovelace case,²⁶ the Omar Khadr case²⁷ and many others show the need for external checks on Canadian human rights abuse remedies. Canada should act now to avoid emboldening others to postpone, ignore or refuse child rights enforcement.

²⁰ Status of the Optional Protocol to Convention on the Rights of the Child on a communications procedure, https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-11-d&chapter=4&clang=en#top, includes France, Germany, Belgium, Denmark, Finland, Italy, Ireland, Spain, Switzerland and Portugal among the list of State Parties.

²¹ Status of the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women acceded to by Canada on October 18, 2002, two years after its adoption.

https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-11-d&chapter=4&clang=en#top

²² Article 14 of the UN Convention on the Elimination of All Forms of Racial Discrimination sets out the individual right of petition and was signed by Canada in 1966 the year following its adoption and ratified four years later on October 14th 1970. https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-2&chapter=4&clang=en

²³ The UN Convention on the Rights of Persons with Disabilities was adopted in 2006 and ratified by Canada in 2010. It has an Optional Protocol on an individual communications procedure which Canada ratified on December 3rd 2018. https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-15-a&chapter=4&clang=en

²⁴ The Canadian government acceded to the Optional Protocol on a communications procedure under the International Covenant on Civil and Political rights in May 1976, as soon as the instrument came into effect. https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-5&chapter=4&clang=en

²⁵ Senate of Canada, *Children: The Silenced Citizens, Effective Implementation of Canada's International Obligations With Respect to the Rights of Children, Final Report of the Standing Senate Committee on Human Rights*, April 2007, pp. 54-60.

²⁶ Summary: APTN News, *Sandra Lovelace Nicholas*, <https://aptnnews.ca/aboriginal-history-month/sandra-lovelace-nicholas/>; case: Sandra Lovelace v. Canada, Communication No. 24/1977: Canada 30/07/81, UN Doc. CCPR/C/13/D/24/1977, <https://www.escri-net.org/caselaw/2010/sandra-lovelace-v-canada-communication-no-241977-canada-300781-un-doc-ccprc13d241977>.

²⁷ Sandy Garossino, Canada's National Observer, *What if Omar Khadr isn't guilty?*, 7 July 2017, <https://www.nationalobserver.com/2017/07/07/opinion/what-if-omar-khadr-isnt-guilty>.

A recent troubling example is the lack of progress on implementing the Canadian Human Rights Tribunal's order to compensate First Nations children for discrimination by Canada's child welfare services. The fifteen-year saga of the *First Nations Child and Family Caring Society et al. v. Canada* case²⁸ in human rights court shows the need for meaningful redress. The case dealt with alleged discrimination where the federal government funded First-Nations child-care services below PT child-care services. The first Canadian Human Rights Tribunal result went against First Nations children when it found no discrimination because the federal government did not itself offer comparable services to other groups. The Federal Court of Appeal overturned that decision in 2013, leading to the 2016 decision from the Canadian Human Rights Tribunal that found discrimination.

The discrimination finding came nine years after the original complaint. And still, four years later, enforcement of that decision continues to be contested by government before the courts.²⁹ Canada has repeatedly challenged aspects of the enforcement orders and its partial enforcement efforts have not given full effect to the Tribunal's orders.³⁰ Had the Optional Protocol been in place, it is conceivable the Committee could have acted on the matter before 2016. Under Article 7 of the Optional Protocol, the Committee may exceptionally review complaints before all national avenues have been exhausted, if the remedy is unreasonably prolonged. It may be that at some point between the original complaint and the tribunal's decision, the process would have been found unreasonably prolonged and the Committee may have been able to step in to guide Canada towards a quicker solution. Article 6 of the Optional Protocol allows the Committee to ask Canada to take interim measures to avoid irreparable harms. These mechanisms provide meaningful remedies which could confer real benefits to First Nations children today.

Canada's Constitution adopts as our supreme law the *Charter of Rights and Freedoms*, which begins, "Canada is founded upon principles that recognize the supremacy of God and the rule of law."³¹ The UN Indicators on the Rule of Law define it as "a principle of governance in which all persons, institutions and entities, public and private, including the State itself, are accountable to laws that are publicly promulgated, equally enforced and independently adjudicated, *and which are consistent with international human rights norms and standards*"³² (emphasis added).

Canadian children ought to have the right to access a treaty-based international remedy. This goes beyond standing up for children, to a question of Canada's constitutional and international human rights obligations. The right of individual petition to international human rights treaty bodies is a bulwark against authoritarianism and is an international human rights standard for the

²⁸ *First Nations Child & Family Caring Society of Canada et al. v. Attorney General of Canada (representing the Minister of Indian and Northern Affairs)*, 2016 CHRT 16 (CanLII).

²⁹ Andrea Gunn, The Chronicle Herald, Ottawa has spent more than \$5 million in legal fees fighting complaints about First Nations child welfare, 31 January 2020, <https://www.thechronicleherald.ca/news/canada/ottawa-has-spent-more-than-5-million-in-legal-fees-fighting-complaints-about-first-nations-child-welfare-405103/>.

³⁰ Amnesty International Legal Team, *First Nations Child and Family Caring Society et al. v. Canada*, <https://www.amnesty.ca/legal-brief/first-nations-child-and-family-caring-society-et-al-v-canada>

³¹ Canadian Charter of Rights and Freedoms, s 7, Part 1 of the Constitution Act, 1982, being Schedule B to the Canada Act 1982 (UK), 1982, c 11.

³² The United Nations, *Rule of Law Indicators: Implementation Guide and Project Tools*, https://www.un.org/en/events/peacekeepersday/2011/publications/un_rule_of_law_indicators.pdf.

rule of law. Letting individuals challenge their governments before international human rights treaty bodies may be the most significant advance in international law since the treaty of Westphalia in 1648. It is not defensible to provide some groups with the opportunity to exercise this right, while denying it to children who are vulnerable, cannot exert their agency through the electoral process, and who are entitled to have decisions made in their best interests. Denying this right does not accord with the UN's Sustainable Development Goal 16.3, which calls on governments to "promote the rule of law at national and international levels and ensure equal access to justice for all."

Initially an individual right of petition was not included in the UNCRC because some States believed that its economic, social and cultural rights could not be directly enforceable. Canada must not espouse such an outdated view. This would be inconsistent with Canada's recent decision to ratify the communications procedure protocol for the *Convention on the Rights of Persons with Disabilities*, which is equally embracing in terms of economic, social and cultural rights. Children must receive the equal benefit and protection of the law.

Canada's combined Fifth and Sixth reports do not respond to the call for ratification in the 2012 Concluding Observations. In January 2012 the CCCYA also wrote as a Council to the Minister of Foreign Affairs for Canada and the Prime Minister requesting swift action to consult provinces and territories and begin the ratification process, but the Canadian government at the time did not heed this advice. Following the Trudeau Government's election in 2015, the Minister of Foreign Affairs welcomed ratification in principle, but Canada has not followed up with action or justified its inaction. Canadian Child and Youth Advocates call on Canada to provide answers and act swiftly.

Recommendation 1

It is recommended that the Canadian government take immediate steps to ratify the Optional Protocol on a communications procedure under the UNCRC. Canada should not opt out of the Inquiries procedure (Article 13) and should opt in to the Inter-State Communications procedure (Article 12). The ratification should include an appropriately funded national educational campaign to inform children of their UNCRC rights and their right to access remedies before the Committee.

Establish a national Children's Commissioner and a national framework to protect and preserve CYAs and the effectiveness of their broad mandates

The combined Fifth and Sixth Reports also do not adequately address the Concluding Observations' paragraph 23. This paragraph recommends Canada establish "a federal Children's Ombudsman" to monitor and protect children's UNCRC rights at the federal level. In establishing this Ombudsman (or Children's Commissioner), the Committee recommends Canada follow the guidelines in the UN's Paris Principles on the status of national human rights institutions and the guidelines in the Committee's general comment no. 2 (2002). These two sets of guidelines are carefully designed to help states establish effective and independent institutions with appropriate capabilities and resources.

Canada would like to see itself as a country that works hard to protect all its children, letting none “slip through the cracks.” There are significant “cracks” in the current system. The provincial and territorial Advocates do not all have jurisdiction for all rights guaranteed under the UNCRC; there are gaps in what Child and Youth Advocates can do; at least one territory has no independent Advocate’s Office; and Canada’s federal structure creates jurisdictional challenges in regards to enforcement of child rights in many areas of federal jurisdiction including youth criminal justice reform, immigration and settlement services, services to Indigenous children, divorce, federal social security, income and tax benefits or health benefits to children of military personnel.³³ A federal Children’s Commissioner or Ombudsman is critical to filling these gaps and avoiding the situation where legitimate rights complaints go unaddressed.

Furthermore, this lack of oversight at the federal level disproportionately impacts Indigenous children and youth, and particularly, those children living on-reserve, to whom service provision is primarily the responsibility of the federal government. Such a disparity is unacceptable and, in our view, discriminatory. In order to fulfill the non-discrimination principle in the UNCRC (Article 2), special measures are required for the most vulnerable populations to bring them to a position where they can enjoy their rights at the same level as other children. Indigenous children in Canada are a vulnerable population and require an independent advocate to ensure all of their rights (including those impacted by federal policies and legislation) are respected. This is also required by Article 21.2 of UNDRIP, of which Canada is now a full supporter “without reservation or qualification” directing States to “take effective measures and, where appropriate, special measures to ensure continuing improvement of [Indigenous peoples’] economic and social conditions. Particular attention shall be paid to the rights and special needs of Indigenous elders, women, youth, children and persons with disabilities”. A national Children’s Commissioner with a particular focus on ensuring the rights of Indigenous children and youth are respected would constitute such a special measure. In this regard, a national Commissioner would be particularly suited to ensuring Canada respects the rights of Indigenous children and youth by monitoring implementation of the recommendations of the Truth and Reconciliation Commission and the National Inquiry on Missing and Murdered Indigenous Women and Girls.

The decision to establish a national Children’s Commissioner should not be difficult for Canada to make. Canada’s Senate provided a clear blueprint for such an office as early as 2007.³⁴ The Committee has “repeatedly” called for it, in each of its Concluding Observations to Canada.³⁵ The CCCYA has repeatedly urged Government to establish such an Office,³⁶ as have the

³³ CBA Toolkit, Independent Human Rights Institutions for Children, <http://www.cba.org/Publications-Resources/Practice-Tools/Child-Rights-Toolkit/theSystem/Independent>.

³⁴ UNICEF Report

www.unicef.ca/sites/default/files/imce_uploads/DISCOVER/OUR%20WORK/ADVOCACY/DOMESTIC/GOVERNANCE/DOCS/Commission%20booklet%20English%20Final.pdf at 2.

³⁵ CBA Toolkit, Independent Human Rights Institutions for Children, <http://www.cba.org/Publications-Resources/Practice-Tools/Child-Rights-Toolkit/theSystem/Independent>.

³⁶ CCCYA presentation to the Senate Standing Committee on Human Rights, February 21, 2005; Joint Call to Action, Moncton, May, 2016.

Canadian Bar Association,³⁷ the Canadian Pediatric Society,³⁸ the Canadian Coalition for the Rights of the Child,³⁹ Children First Canada,⁴⁰ as well as numerous individual Parliamentarians in the House of Commons or the Senate. Four Private members Bills have been tabled but not passed on this topic. Canada's failure to acknowledge or explain its inaction is in itself an affront to children and to its obligations under the Convention.

A State Party's commitment to making structural changes to enforce human rights treaty obligations is a litmus test for a nation governed by the rule of law and genuinely committed to human rights enforcement. At a more basic level, the State Party's acceptance of the human rights treaty body's guidance and direction in the fulfillment of its treaty obligations is an important aspect of its adherence to the rule of law. Canada defends its extradition laws towards countries with increasingly dubious rule of law records, even at some risk to Canadian lives abroad, on the basis of its own adherence to rule of law, but when it comes to keeping its promises to children and respecting its international treaty obligations in relations to child rights, Canada's rule of law discourse breaks down.

Canadian Child and Youth Advocates urge the Committee to take novel and diligent steps in holding Canada to account for its lack of progress in responding to this central recommendation from the Committee over the past twenty-five years. Article 44 of the Convention requires State Parties in preparing their periodic reports to "indicate factors and difficulties, if any, affecting the degree of fulfilment of the obligations under the present Convention."⁴¹ Article 44 also allows the Committee to request from State parties "further information relevant to the implementation of the Convention."⁴² Article 45 of the Convention provides that the Committee may invite UNICEF "and other competent bodies as it may consider appropriate to provide expert advice on the implementation of the Convention" and that it may transmit "as it considers appropriate" to such competent bodies "any reports from State Parties that... indicate a need for technical advice or assistance, along with the Committee's observations and suggestions, if any, on these...indications."⁴³ Article 45 further indicates that the Committee may ask the General Assembly to request the Secretary General to undertake studies on its behalf relating to the rights of the child, and that it may make suggestions and general recommendations to State Parties based upon the reports it receives.⁴⁴

The CCCYA suggests that given Canada's persistent lack of progress or ability to explain its delay in heeding the Committee's advice in relation to this central recommendation for a national independent monitoring body for children's rights, that the Committee would do well to offer Canada some technical assistance in this regard. The Committee could share its previous

³⁷ Canadian Bar Association, Resolution 18-01-A, *National Commissioner for Children and Youth*, <https://www.cba.org/Our-Work/Resolutions/Resolutions/2018/National-Commissioner-for-Children-and-Youth>.

³⁸ Canadian Pediatric Society, *Are We Doing Enough? A status report on Canadian public policy and child and youth health*, 2012 Edition, <https://www.cps.ca/uploads/advocacy/StatusReport2012.pdf>.

³⁹ Canadian Coalition for the Rights of the Child, <http://rightsofchildren.ca/>.

⁴⁰ Children First Canada, <https://childrenfirstcanada.org/>.

⁴¹ UN Convention on the Rights of the Child, <https://www.ohchr.org/en/professionalinterest/pages/crc.aspx>.

⁴² *Ibid.*

⁴³ *Ibid.*

⁴⁴ *Ibid.*

recommendations on this point with UNICEF through its Canada Office and invite UNICEF Canada, together with such other competent bodies the Committee may deem appropriate to meet with Canadian State Party officials to determine a clear path forward on this key recommendation. Additionally, the Committee might invite Canada, along with such competent bodies as it deems appropriate, to work with the UN Secretariat General and the Committee's Secretariat to organize a Day of General Discussion, or a special consultation of similar stature, in Canada on the challenges in achieving structural change and progress in child rights implementation in advanced federal states. Other State Parties and representatives from civil society, in Belgium, Australia, the United Kingdom, or Switzerland perhaps, may find common cause on this front and be invited to participate.

It is clear however that waiting another 5 to 8 years, for another round of reporting, so that Canadian officials can avoid their responsibilities again on this crucial recommendation is not fair to children. Canada and the Committee itself have as much to lose as children themselves, by allowing this pretence to continue. The rule of law and the respect for international human rights treaty obligations, and treaty body enforcement mechanisms are all called into question by thirty years of inaction by a Government that is regarded the world over as a human rights champion. Stronger enforcement action by the Committee is overdue and the Canadian Council of Child and Youth Advocates stands ready to assist the Committee and Canada in any way it can to make meaningful progress on this front.

Turning its gaze more inwardly for a moment, the CCCYA also recognizes that its own collaborative framework, and indeed the very mandates of its constituent members could also benefit from the Committee's advice and recommendations. Most Advocates offices in Canada were established on the basis of the American model of designating a champion or advocate for vulnerable children in state care or custody. As the USA is the only nation in the world that has not ratified the UNCRC, it is unsurprising this model is not child rights-based. Canadian provinces and territories have more recently come around to the view that child and youth advocate legislation should be informed by the Committee's General Comment No. 2 and by the Paris Principles. CCCYA members have also all taken important steps to improve their rights-based advocacy, within the confines of their existing mandates. Much more, however, remains to be done to ensure child rights are promoted and enforced, through appropriate oversight, in every jurisdiction and at every level of government.

With respect to the Committee's recommendation for a comprehensive national implementation framework for children's rights, Canada's Fifth and Sixth Reports do not adequately address paragraph 13 of the Concluding Observations. While it broadly referenced strategies embarked upon by FPT governments, such as on the issues of gender-based violence, housing and homelessness, poverty reduction and early learning and childcare, these do not meet the intent of the Committee's recommendation for a national, comprehensive implementation framework for children's rights. Although these strategies – if implemented effectively – will positively impact the well-being of children and youth in Canada, for the most part, they are not specific to ensuring respect for the rights under the UNCRC. For example, neither Canada's recently released Opportunity for All: Canada's First Poverty Reduction Strategy (2018), Saskatchewan's Poverty Reduction Strategy (2014) nor British Columbia's TogetherBC Poverty Reduction Strategy (2019) include indicators specific to children that will assist in measuring realization of the Convention. In order to make their best interests a paramount consideration in any action that

will impact them either directly or indirectly, children and youth must receive distinct consideration and not be subsumed under generalized actions to eliminate social injustices.

It would be appropriate for Canada to act immediately on this recommendation from the Committee, before its next appearance to defend its report. The national framework these Concluding Observations envision would give Canada's children a coherent plan for the enforcement, promotion and protection of their rights.

Recommendation 2

It is recommended that the Committee take innovative and forceful measures to ensure Canada's meaningful response to the Committee's long-standing and repeated recommendations for the establishment of a national Children's Commissioner, including a) the request for technical assistance by UNICEF Canada to advise the Canadian government in this matter and monitor its progress on this recommendation and b) an invitation to the Government of Canada to organize with the Secretariat General, subject to direction from the Committee and the General Assembly, a special high level consultation on the challenges in achieving structural change and progress in child rights implementation in advanced federal states.

Child Welfare reform and domestic incorporation of the UNCRC in Canadian law

It's not all unfortunate delays and overdue recommendations. There have been recent positive legislative efforts to protect children's rights at the PT level.

In Prince Edward Island, the existing provincial children's commissioner is being replaced with a new independent Advocate's Office. PEI's bill to do this passed second reading on November 21, 2019.⁴⁵ The change includes making the commissioner an independent officer of the legislature as well as moving the office to separate premises.⁴⁶ This accords with the UN's *Paris Principles* and the Committee's General Comment 2, which recommend financial independence for (national) human rights institutions, including separate staff and offices.⁴⁷

Ontario recently made positive changes to provincial child protection laws to afford better results for Ontarian children with the *Child, Youth and Family Services Act*. Among the changes are an increase in the age cap for child protection from 16 to 18. This change increases the range of children eligible for protection. It helps ease the difficult transition of "aging out" of child protection services by moving it two years later, facilitating a transition to post-care support

⁴⁵ Stu Neatby, Journal Pioneer, *PC Bill establishes independent child and youth advocate for P.E.I.*, 21 November 2019, <https://www.journalpioneer.com/news/local/pc-bill-establishes-independent-child-and-youth-advocate-for-pei-378851/>.

⁴⁶ Kerry Campbell, CBC News, *P.E.I.'s child advocate to gain independence, new office as PCs look to fulfil election pledge*, 6 November 2019, <https://www.cbc.ca/news/canada/prince-edward-island/pei-child-advocate-office-1.5348782>.

⁴⁷ *Paris Principles*, Composition and guarantees of independence and pluralism para 2 and *General Comment 2*, para 26.

services or adult protection services in appropriate cases. The new law also increases the protection system's sensitivity to diversity factors. It requires decisions and services to reflect the child's individuality based on race, culture, heritage, religion, sexual orientation and gender identity. It increases cultural protection for Indigenous people by requiring services to recognize the child's culture and their connection to their community. The law increases oversight of service providers and increases the focus on early intervention to prevent crisis situations.⁴⁸ Importantly, the UNCRC and the child rights it proclaims are referenced in the preamble to the Act, helping to pave a path towards incorporation of the Convention in domestic law.

Quebec's Special Commission on Children's Rights and Youth Protection (Laurent Commission)⁴⁹ was created in June 2019 with Commissioners nominated in July and September 2019. Its mandate is to review Quebec's youth protection systems to create recommendations for improvement. In February 2020 it heard from CCCYA president Del Graff, from Lisa Wolfe, Director of Policy for UNICEF Canada and other child rights experts. The Commission is actively considering how the Convention could best be enforced in domestic law in Quebec, how the oversight body for child rights enforcement currently housed within the Commission des droits de la personne et de la jeunesse might best be strengthened to promote child rights enforcement, how CRIA processes and child rights data monitoring efforts in Quebec might be improved. The Commission is mandated to provide its final report to the Quebec government in November 2020.⁵⁰

In its last Concluding Observations the Committee recommended that Canada find "the appropriate constitutional path" towards a comprehensive legal framework incorporating the provisions of the Convention and its Protocols into domestic law at all levels. Under the Constitution Act, 1867 there was a clear path towards that result through the treaty making power. However since the 1940s that federal power has fallen into disuse and its use today might trigger more constitutional challenges. A case could be made however that international human rights treaty enforcement would justify an appropriate use of that federal power. The federal government's legislation in relation to privacy rights protection under PIPEDA is a good example of how federal laws can apply provincially in the absence of adequate provincial laws in relation to human rights enforcement in an increasingly globalized world.

The CCCYA however views with interest the work that is being done in some provinces to advance child rights enforcement and invites the Committee to consider that in federal states where sub-national governments have constitutional authority over property and civil rights, federal State imposed solutions are not always the best way forward for domestic incorporation of human rights treaty obligations. Dualism however is not an answer for a failure to observe a State's international human rights obligations. Even dualist States must be bound by the rule of law. Canada's constant position before the Committee has been that Canadian laws conform with

⁴⁸ Ontario Ministry of Children and Social Services, *Your Voice Matters*, <http://www.children.gov.on.ca/htdocs/English/professionals/childwelfare/modern-legislation.aspx>.

⁴⁹ In French, the Commission spéciale sur les droits des enfants et la protection de la jeunesse (Commission Laurent); see <http://www.bibliotheque.assnat.qc.ca/guides/fr/les-commissions-d-enquete-au-quebec-depuis-1867/11546-commission-laurent>.

⁵⁰ Ibid.

the UNCRC. It is disingenuous for Canada to evade the question and the Committee's clear direction in its third recommendation to Canada from its last Concluding Observations. Canada has to make clear its position with respect to application of the Convention in domestic law and propose a path that will firmly guarantee children's rights and provide them with accessible remedies for rights infringements before competent domestic authorities.

Recommendation 3

It is recommended that the Committee strongly advise Canada and its provincial and territorial governments to act immediately to incorporate the UNCRC into domestic law in every Canadian jurisdiction.

Supporting the Canadian Council of Child and Youth Advocates

Canada can support children's rights by assisting the Canadian Council of Child and Youth Advocates. The CCCYA represents a cooperative effort between Child and Youth Advocates and equivalent agencies from ten provinces and two territories across Canada. The CCCYA acts to improve the situation of Canadian children and their rights. This organization does not require establishment, control or decision-making from the federal government. Rather, it requires support in the form of recognition and acceptance of its expertise in matters commonly impacting children and youth across the country. Supporting the recommendations of the CCCYA provides a high-value investment for Canada's government to improve the state of children's rights. The CCCYA offers the combined knowledge and experience of Canada's independent legislative officers who are experts in children's rights. The CCCYA works for children's rights in Canada through interjurisdictional efforts to coordinate children's policy, sharing best practices and advancing national policy development. It brings together knowledge, organizes ideas and discerns effective courses of action. The CCCYA's access to data and perspectives from across Canada's PTs uniquely positions it to understand problems and develop solutions that work for all Canadians.

Other FPT processes exist in Canada in relation to independent parliamentary officers or specialized human rights enforcement mechanisms. Canadian Auditors General have regular meetings, as does the Canadian Association of Statutory Human Rights Agencies (CASHRA), or Forum of Canadian Information and Privacy Commissioners, and the Forum of Canadian Ombudsman. Unlike these other bodies the CCCYA is significantly disadvantaged by the absence of a federal partner institution. In other similar associations, the Canadian institution often commands a budget that rivals all other provincial and territorial institutions combined. Just as Canadian Advocates look to one another for guidance and advice, federal institutions look to their global peers and bring global enforcement challenges, successes and solutions to the FPT table for discussion and follow up. In the absence of a Canadian Commissioner for Children, the CCCYA's resources and means are significantly diminished and its outlook is necessarily less global and more provincial. In the absence of a lead national partner, larger provincial institutions in British Columbia or Alberta shoulder a disproportionate role in managing CCCYA business. There is little time to develop joint advocacy or to move matters forward on issues of

common concern. And yet, the CCCYA's limited experience in this kind of collaboration, such as through its work on the issue of youth suicide as is discussed below, points to important opportunities for progress.

These projects show how PTs often work on their own initiative for children's rights and interests.

For the CCCYA to function as effectively as it can, it requires federal government collaboration and investment. Even in the absence of a Canadian Children's Commissioner Council could explore with Canada some form of interim representation or observer status for an appropriate federal observer. Canada could also contribute financially to Council's annual operations through such an observer membership. Canada can support the CCCYA's work by ensuring recommendations are adopted and followed. Furthermore, the creation of a national framework for children's rights organizations as recommended in paragraph 13 of the Committee's 2012 Concluding Observations would also facilitate the CCCYA's work by enhancing knowledge sharing, better enabling consistent standards and improving the back-and-forth between PT child-rights organizations and the federal government. This would help set the stage for stronger partnerships that allow both levels of government to work better in realizing UNCRC rights. The CCCYA would work in concert with a national Children's Commissioner and could assist the national office to critically examine thematic issues or trends that span provincial/territorial borders and affect children and youth in particular regions and/or across the country. Increasing support for the CCCYA is an effective step Canada can take to do what's right for our children.

An example of how support for the findings and recommendations of the CCCYA will positively impact children and youth in Canada is found in its recent efforts to put together its collective expertise on the national issue of youth suicide. Suicide continues to be the second leading cause of death of young people in Canada between the ages of 10 and 24.⁵¹ Globally, Canada has been ranked within the top five countries for child suicide rates.⁵² When it comes to Indigenous youth in Canada, suicide rates are substantially higher⁵³.

There have been efforts at both the national and provincial levels in this area. These include a federal National Aboriginal Youth Suicide Prevention Strategy (2007) and a number of approaches and strategies set out by provinces and territories to address Indigenous youth suicide. Unfortunately, many important aspects of these approaches, such as youth involvement and recognition of traditional healing, have not been fully respected and these strategies have failed to demonstrate progress. For a national response to be effective, a comprehensive, multi-sectoral suicide prevention strategy is needed. The Government of Canada has implemented *An Act Respecting a Federal Framework for Suicide Prevention* (2012). However, this Act simply sets out strategic objectives, guiding principles and commitments regarding suicide prevention. It

⁵¹ Mental Health Commission of Canada. (2017) *Suicide Prevention*. Ottawa, ON: Author. Retrieved from: <https://www.mentalhealthcommission.ca/English/focus-areas/suicide-prevention>

⁵² Children First Canada. (2018). *The Canadian Children's Charter: A Call to Action to Respect, Protect and Fulfill the Rights of Canada's Children*. Retrieved from: <https://childrenfirstcanada.org/s/CCC-Final-Release.pdf>.

⁵³ Statistics Canada. (2017). Aboriginal identity population by both sexes, total-age, 2016 counts, Canada, provinces and territories, 2016 Census – 25% Sample data. (Statistics Canada Catalogue no. 98-402-S2016009.) Aboriginal Peoples Highlight Tables, 2016 Census. Ottawa

is not a national strategy and does not identify necessary jurisdictional mandates, resources or responsibilities in a clear way. It does not include definitive timelines for action or results.⁵⁴

Continued inaction and/or ineffectiveness by federal, provincial and territorial governments can no longer be tolerated. In this regard, in 2018, the CCCYA was invited to appear before the Inter-American Commission on Human Rights at the Hearing on the Situation of Human Rights of Indigenous Peoples in Canada. The topic was “Addressing the Indigenous youth suicide crisis in Canada: Barriers and Challenges.”⁵⁵ Additionally, in 2019, the CCCYA released *A National Paper on Youth Suicide* which collated the work done by Council members across the country on the issue of youth suicide and mental health in general. This report is intended to maintain national focus on the issue; help PT governments remove barriers that may impede their UNCRC efforts; and guide PT governments in how to fulfill Canada’s commitment to deal with the suicide crisis in Indigenous communities.⁵⁶ Collectively, these two pieces of work recommended the development and implementation of a new national suicide prevention strategy that fills the gaps created by the piecemeal approach taken within Canada to date.

With this discussion in mind, the CCCYA respectfully suggests the Committee make the following recommendations to Canada:

Recommendation 4

1. *The Government of Canada support the efforts of the CCCYA by having a strong federal presence at the Council table – whether through a national Children’s Commissioner, or otherwise – and taking definitive and timely action on recommendations made by the Council.*
2. *The Government of Canada develop and implement a federally led and provincially/territorially delivered National Suicide Prevention Strategy that includes the following components:*
 - *Emphasis on Indigenous young people as a priority issue*
 - *Provision of culturally-appropriate mental health services*
 - *Adequate resources and designated funding to the provinces and territories to create their own suicide prevention strategies, or to support existing strategies where applicable and effective*
 - *Inclusion of young people in all stages of development and implementation*

⁵⁴ Canadian Council of Child and Youth Advocates. (2018). *Addressing the indigenous youth suicide crisis in Canada: Barriers and Challenges*. Submission to the Inter-American Commission on Human Rights. 167th Extraordinary Period of Sessions. Situation of Human Rights of Indigenous Peoples in Canada Hearing, February 2018.

⁵⁵ *Ibid.*

⁵⁶ Canadian Council of Child and Youth Advocates, *A National Paper on Youth Suicide*, <http://www.cccya.ca/Images/english/pdf/CCCYA%20National%20Suicide%20Paper%20Final%20September%2025%202019.pdf>.

- *Recognition of the need for, and a plan to ensure that, services to children (i.e. child protection, justice, health, education, etc.) are:*
 - o *integrated so as to provide a holistic and well-coordinated response to what are often multi-faceted and complex needs; and*
 - o *trauma-informed to mitigate the effects of trauma and adverse experiences (both as experienced by children and, historically, their parents).*
- *Methods and measures to monitor impact*
- *A cross-jurisdictional data system of suicide attempts and deaths by suicide*
- *Establishment of a national forum or network for research and prevention stakeholders*

Conclusion

Protecting human rights is inherent in Canadian values and culture. Children are one of the most vulnerable groups in society, so it is critical that we strive to protect their rights especially. There is much Canada can do to restore its reputation as a leader in this area. Well-crafted recommendations have come in from reputable sources offering guidance in Canada's efforts to protect children, from bodies at all levels up to the Committee. The best time to act on these recommendations is now.

List of recommendations

Recommendation 1

It is recommended that the Canadian government take immediate steps to ratify the Optional Protocol on a communications procedure under the UNCRC. Canada should not opt out of the Inquiries procedure (Article 13) and should opt in to the Inter-State Communications procedure (Article 12). The ratification should include an appropriately funded national educational campaign to inform children of their UNCRC rights and their right to access remedies before the Committee.

Recommendation 2

It is recommended that the Committee take innovative and forceful measures to ensure Canada's meaningful response to the Committee's long-standing and repeated recommendations for the establishment of a national Children's Commissioner, including a) the request for technical assistance by UNICEF Canada to advise the Canadian government in this matter and monitor its progress on this recommendation and b) an invitation to the Government of Canada to organize with the Secretariat General, subject to direction from the Committee and the General Assembly, a special high level consultation on the challenges in achieving structural change and progress in child rights implementation in advanced federal states.

Recommendation 3

It is recommended that the Committee strongly advise Canada and its provincial and territorial governments to act immediately to incorporate the UNCRC into domestic law in every Canadian jurisdiction.

Recommendation 4

3. *The Government of Canada support the efforts of the CCCYA by having a strong federal presence at the Council table – whether through a national Children's Commissioner, or otherwise – and taking definitive and timely action on recommendations made by the Council.*
4. *The Government of Canada develop and implement a federally led and provincially/territorially delivered National Suicide Prevention Strategy that includes the following components:*
 - *Emphasis on Indigenous young people as a priority issue*
 - *Provision of culturally-appropriate mental health services*
 - *Adequate resources and designated funding to the provinces and territories to create their own suicide prevention strategies, or to support existing strategies where applicable and effective*
 - *Inclusion of young people in all stages of development and implementation*

ALTERNATIVE REPORT OF THE CCCYA

- *Recognition of the need for, and a plan to ensure that, services to children (i.e. child protection, justice, health, education, etc.) are:*
 - *integrated so as to provide a holistic and well-coordinated response to what are often multi-faceted and complex needs; and*
 - *trauma-informed to mitigate the effects of trauma and adverse experiences (both as experienced by children and, historically, their parents).*
- *Methods and measures to monitor impact*
- *A cross-jurisdictional data system of suicide attempts and completed suicide*
- *Establishment of a national forum or network for research and prevention stakeholders*