CALLS TO ACTION #2 & #55
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CHILDREN'S RIGHTS

SEPTEMBER 2022

Canadian Coalition for the Rights of Children
Coalition canadienne pour les droits des enfants

PlentyCanada

Research and Design by
Tate Chong, 2022

Child welfare

2. We call upon the federal government, in collaboration with the provinces and territories, to prepare and publish annual reports on the number of Aboriginal children (First Nations, Inuit, and Métis) who are in care, compared with non-Aboriginal children, as well as the reasons for apprehension, the total spending on preventive and care services by child-welfare agencies, and the effectiveness of various interventions.

National Council for Reconciliation

55. We call upon all levels of government to provide annual reports or any current data requested by the National Council for Reconciliation so that it can report on the progress towards reconciliation. The reports or data would include, but not be limited to:

i. The number of Aboriginal children—including Métis and Inuit children—in care, compared with non-Aboriginal children, the reasons for apprehension, and the total spending on preventive and care services by child-welfare agencies.

Child welfare does not have the information to know what services and programs are effective and for whom those programs are most effective or what conditions are optimal to achieve effectiveness.

Interview participants pointed out that the current lack of data handicaps child welfare's ability to make decisions, allocate resources where most needed and effectively implement strategies that will promote client outcomes.

- Canadian Association of Social Workers, "Understanding Social Work and Child Welfare: Canadian Survey and Interviews with Child Welfare Experts" (2018)

Emergency Meeting on Child and Family Services (January 2018)

In January 2018, the Minister of Indigenous Services hosted an emergency national meeting between the federal, provincial, and territorial governments, Indigenous leaders, and social agencies to address the over-representation of Indigenous children in the child welfare system. The meeting concluded with six points of action, including one on data collection:

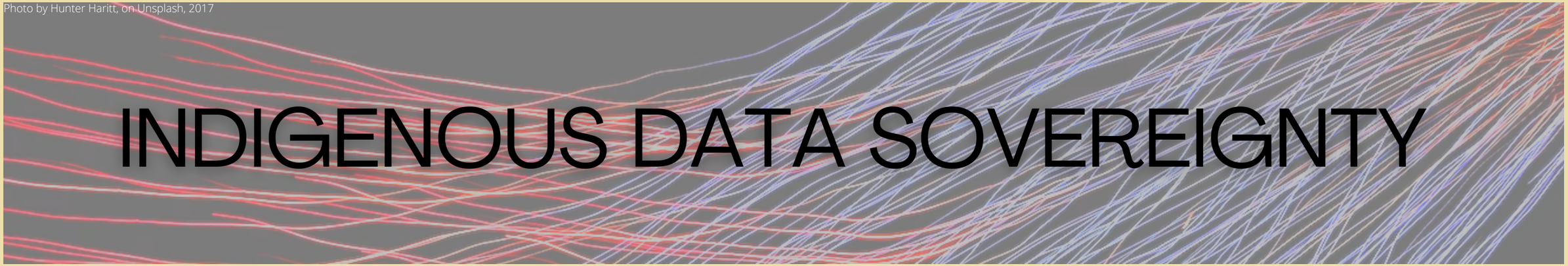
> A6. Developing a data and reporting strategy with provinces, territories and Indigenous partners.

The Government of Canada has launched national distinctions-based working groups with Indigenous, provincial and territorial partners. These groups are working to co-develop data and reporting strategies to implement this point of action in a manner that respects Indigenous data sovereignty.[i]

In Canada's report to the Committee on the Rights of the Child (the Committee) for its 5th/6th Review of Canada under the Convention on the Rights of the Child (the Convention), as well as in its Reply to the List of Issues, Canada stated that it is currently working on data collection methods, in accordance with the final report of the Truth and Reconciliation Commission of Canada.[ii]

Canada's country report describes high levels of accountability at provincial levels and provided information on data collection within the provincial child welfare systems.[iii] However, the lack of regular annual reports with accurate numbers suggests that provincial accountability and transparency is not as high as stated; rather, in 2018, the Ontario Coroner noted that, "there is currently no way to monitor and track the length of young people's placements or the number of placement transfers they have at the systemic level."[iv]

Photo by Pine Watt, on Unsplash, 2017



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INDIGENOUS DATA SOVEREIGNTY

As sovereign nations, Indigenous Nations have control over data that is created with or about themselves, much in the same way that they have control over the governance of their people and communities. This is supported by the *United Nations Declaration on the Rights of Indigenous Peoples*, including in the provisions concerning self-determination (articles 3 and 4) and the right to maintain and strengthen their distinct political, legal, economic, social and cultural institutions (article 5). Historically, the deprivation of control over Indigenous data perpetuates colonial practices, including the unethical exploitation of research participants, the failure to report the conclusions back to the community, the distortion of the data as it is presented through a colonial lens, and research methods which are inconsistent and disrespectful of Indigenous customs.[v]

The formal definition of data sovereignty is, “managing information in a way that is consistent with the laws, practices and customs of the nation-state in which it is located.”[vi] Consequently, each group has their own conception of the term. For example, researchers working with certain First Nations groups must abide by the OCAP principles (Ownership, Control, Access and Possession),[iii] whereas other groups have their own legislation.[vii]

As data sovereignty applies to child welfare, the Committee’s General Comment 11 (Indigenous children and their rights under the Convention) provides that:

> States parties should, in cooperation with indigenous families and communities, collect data on the family situation of indigenous children, including children in foster care and adoption processes.[ix]

The details of such cooperation varies by band and continues to be the subject of much discussion. However, a united and consistent focus on the best interests of the child and other principles of the Convention may help ensure that children do not inadvertently fall through the gaps when the parties are negotiating and in the final agreement.

A Symptom of a Long-Standing and Systemic Problem

Despite the attention drawn to the progress made to date, it remains that the lack of data collection is a long-standing and recurring systemic problem.

Article 4 of the Convention provides that:

> States Parties shall undertake all appropriate legislative, administrative, and other measures for the implementation of the rights recognized in the present Convention.[x]

Since 2003, the Committee has recommended for Canada to implement a national data collection system to track its progress and strengthen the implementation of the Convention.[xi]

According to the Convention, Canada also has special obligations toward children in care, including to provide “special protection and assistance” to children deprived of their family environment,[xii] and to periodically review the child’s placement if they have been removed from their home.[xiii] Without accurate data, Canada is unable to fulfill these obligations.

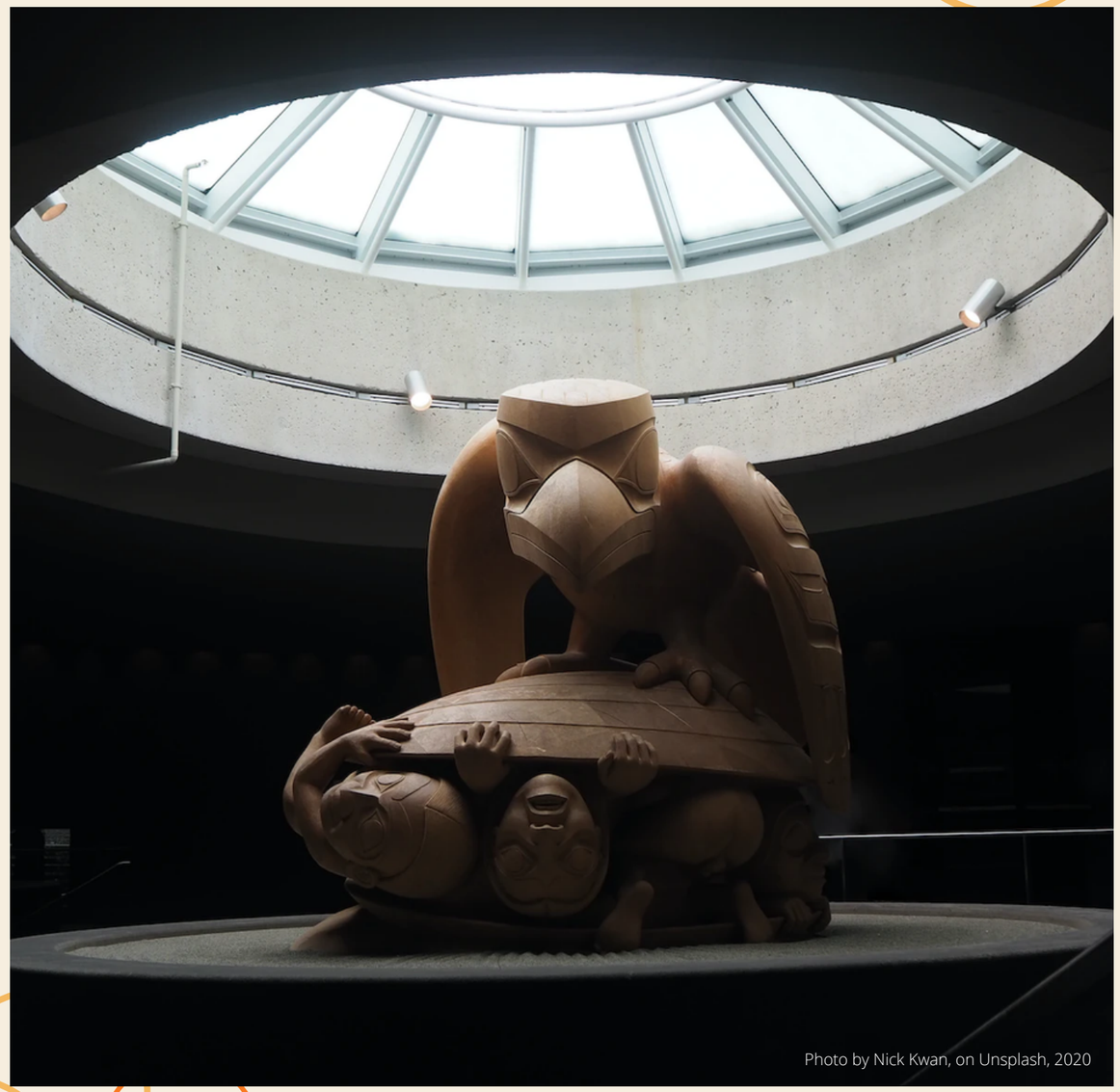

Photo by Nick Kwan, on Unsplash, 2020

In 2012, the Committee noted in its Concluding Observations that Canada could not provide an accurate number of children in care:

> In particular, the State party report lacked data on the number of children aged 14 to 18 years old placed in alternative care facilities.[xiv]

The Committee consequently recommended that:

> … appropriate data on children in special situations of vulnerability be collected and analyzed to inform policy decisions and programs at different levels.[xv]

During this reporting cycle, the Committee requested again for disaggregated data of children deprived of a family environment. Although Canada was able to provide the numbers for children in care in most provinces, it could not fulfill the Committee's request. Despite how Canada has, since 2012, improved data collection on children in foster care in private homes, there remains significant gaps, such as with respect to children in group care settings. The data that Canada collects is insufficient to produce full annual reports, as recommended by the Calls to Action and as requested by the Committee.

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Despite the promises for change and the encouragement from various bodies and non-governmental organizations, there is still no annual reports, regular analyses to identify problems, or any public accountability in these systems. The *Act respecting First Nations, Inuit and Métis children, youth and families* came into force in January 2020, but it does not provide for any mandatory data collection [xvi] and instead, provides the Minister with the "discretionary" power to gather and disclose information.[xvii] Similarly, a $40-billion agreement unveiled by the Canadian government on January 4, 2022, promises reform and compensation for those who were harmed by the child welfare system and the overly narrow definition of Jordan's Principle, but does not mention an accountability mechanism. Significant funding has been announced to address the issues faced by Indigenous children, but robust data collection and accountability mechanisms are necessary to ensure that the most vulnerable children are receiving the resources they need.

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The lack of information prevents the early identification and resolution of failures. This is an issue that has already been raised by the Committee and NGOs;[xviii] the Canadian Coalition for the Rights of Children (CCRC) has repeatedly made the case that if Canada implemented its obligations under the Convention and the recommendations made by each review, the situation of Indigenous children would have been addressed long before the Calls to Action in 2015. Addressing these issues and engaging in the systemic implementation of the Convention earlier could have mitigated the costs associated with the Tribunal rulings and compensation agreements.

Yet, this is not an issue that can be remedied only by legislative reform and rulings by the Canadian Human Rights Tribunal, but it requires systemic changes with the implementation of a comprehensive and national data collection system to track the progress in children's rights. The consistent failure to collect data has repercussions that extend beyond the Indigenous child welfare system; the historical mistreatment of Indigenous children is not an anomaly, but a symptom of the consistent failure to properly implement children's rights in Canada. For example, in their submissions to the Committee for the 5th/6th review, the National Association of Friendship Centres raised concerns about the lack of data on urban Indigenous youth[xix] and the New Brunswick Child and Youth Advocate raised concerns about the lack of data on child welfare generally.[xx] This was most recently highlighted by the Laurent Commission of Quebec (the Special Commission on the Rights of the Child and Youth Protection) which, as its first recommendation, recommended the creation of a "Commissaire au bien-être et aux droits des enfants" to facilitate and monitor the implementation of the Convention.[xxi] The failure to monitor the implementation of the Convention leads to analogous defects in the ability to analyze and understand the situation of children, develop efficient and targeted strategies, and identify areas of budget investments.

Addressing the data collection issue identified in both the Calls to Action and the Convention, as well as the surrounding systemic issues, will not only allow an understanding of the extent of the disproportionate over-representation of Indigenous children in the child welfare system, but it will also support the government's emphasis on evidence-based policy and decision-making. Having a robust monitoring and accountability system, in accordance with its obligations under the Convention, will benefit both Indigenous and non-Indigenous children.

> If the [Interdepartmental Working Group on Children's Rights] is effective, as the official report claims, how does it explain the failure to monitor, name, and address what has now been shown to be "willful and reckless discrimination" against First Nations children in the provision of federal public services for many years?[xxii]
>
> Canadian Coalition on the Rights of the Child, Alternative Report for the 5th/6th Review of Canada under the Convention on the Rights of the Child (March 2020)

The Committee's Concluding Observations

In its Concluding Observations on the Combined Fifth and Sixth periodic reports of Canada, dated June 23, 2022, the Committee repeated its recommendation for a national data collection system to track progress and strengthen implementation of the Convention:

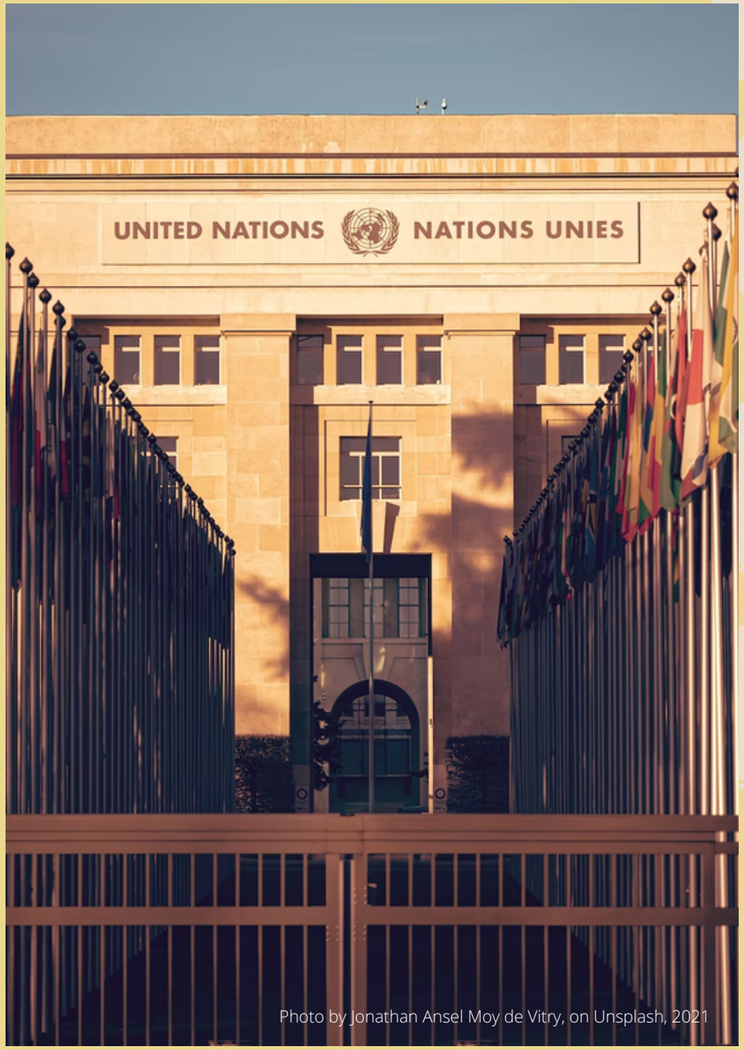

Photo by Jonathan Ansel Moy de Vitry, on Unsplash, 2021

Data collection

11. While noting the existence of 13 unique data regimes, using different techniques, definitions and technologies, making aggregation and comparison of data difficult, and recalling its general comment No. 5 (2003) on general measures of implementation of the Convention, the Committee recommends that the State party:

(a) Improve its data collection system at the federal level in order to allow nationwide comprehensive monitoring of the rights of children and ensure that such data covers all areas of the Convention and the Optional Protocols thereto, with data disaggregated by age, sex, disability, geographical location, ethnic and national origin and socioeconomic background, in order to facilitate analysis of the situation of children, in particular those in situations of vulnerability;

(b) Ensure that data and indicators on children's rights cover all children under 18 years of age and are shared among the ministries concerned and used for the formulation, monitoring and evaluation of policies, programmes and projects for the effective implementation of the Convention;

(c) Take into account the conceptual and methodological framework set out in the guidelines of the Office of the United Nations High Commissioner for Human Rights, entitled Human rights indicators: a guide to measurement and implementation, when defining, collecting and disseminating statistical information.

REFERENCES

[i] Government of Canada, “Progress on six points of action”, online: <https://www.sac-isc.gc.ca/eng/1541188016680/1541188055649> (consulted 3 April 2022); Indigenous Watchdog, “Call to Action #2”, online: <https://indigenouswatchdog.org/call-to-action-2/> (consulted 3 April 2022).
[ii] At para 27; UNCRC, “Replies of Canada to the list of issues in relation to its combined fifth and sixth reports” (received 4 April 2022), at para 34 [Reply to List of Issues].
[iii] At paras 30-32; Reply to List of Issues, at para 16.
[iv] Ontario Coroner, “Safe with Intervention: The Report of the Expert Panel on the deaths of Children and Youth in Residential Placements” (2018).
[v] The First Nations Information Governance Centre, “‘First Nations Data Sovereignty in Canada”, 1 January 2019 : 47 – 69.
[vi] Ibid., citing Taylor J, Kukutai T. eds. Indigenous Data Sovereignty: Toward an Agenda. Centre for Aboriginal Economic Policy Research (CAEPR). Research Monograph No. 38. (Features a chapter, “What does data sovereignty imply: what does it look like?”, authored by C Matthew Snipp). Australian National University Press; 2016.
[vii] The First Nations Information Governance Centre, “The First Nations Principles of OCAP”, online: <https://fnigc.ca/ocap-training/> (consulted 3 April 2022).
[viii] See for example, the Peoples of Deshkan ziibing Anishinaabe Aki, online: <https://www.cottfn.com/wp-content/uploads/2016/09/Deshkan-Ziibiing-Chi-Inaakonigewin-FINAL-7.24.18-WO-Crop-Marks.pdf> (consulted 3 April 2022).
[ix] At para 47.
[x] See also: General Comment 11, at para 47:

States parties should, in cooperation with indigenous families and communities, collect data on the family situation of indigenous children, including children in foster care and adoption processes. Such information should be used to design policies relating to the family environment and alternative care of indigenous children in a culturally sensitive way.

[xi] 21. **The Committee reiterates its recommendation that the State party set up a national and comprehensive data collection system** and to analyse the data collected as a basis for consistently assessing progress achieved in the realization of child rights and to help design policies and programmes to strengthen the implementation of the Convention. Data should be disaggregated by age, sex, geographic location, ethnicity and socio-economic background to facilitate analysis on the situation of all children. More specifically, the Committee recommends that appropriate data on children in special situations of vulnerability be collected and analysed to inform policy decisions and programmes at different levels.

- United Nations, Committee on the Rights of the Child (2012)

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20. **The Committee recommends that the State party strengthen and centralize its mechanism to compile and analyse systematically disaggregated data on all children under 18 for all areas covered by the Convention, with special emphasis on the most vulnerable groups (i.e. Aboriginal children**, children with disabilities, abused and neglected children […] The Committee urges the State party to use the indicators developed and the data collected effectively for the formulation and evaluation of legislation, policies and programmes for resource allocation and for the implementation and monitoring of the Convention.

- United Nations, Committee on the Rights of the Child (2003)

[emphasis added]

REFERENCES

[xii] Article 20(1) of the Convention: A child temporarily or permanently deprived of his or her family environment, or in whose own best interests cannot be allowed to remain in that environment, shall be entitled to special protection and assistance provided by the State.
[xiii] Article 25 of the Covention: States Parties recognize the right of a child who has been placed by the competent authorities for the purposes of care, protection or treatment of his or her physical or mental health, to a periodic review of the treatment provided to the child and all other circumstances relevant to his or her placement.
[xiv] UN Committee on the Rights of the Child, “Concluding Observations: Canada” (2012), CRC/C/CAN/CO/3-4, at para 20. [Concluding Observations, 2012]
[xv] Ibid., at para 21.
[xvi] Yellowhead Institute, “The Promise and Pitfalls of C-92: An Act respecting First Nations, Inuit and Métis Children, Youth and Families”, 4 July 2019, at p 9.
[xvii] See also the submissions the Committee for the 5th/6th review from the Native Women’s Association of Canada, at p 22:

Despite its positive appearance, a paucity of information about the legislation on the part of the Federal Government in terms of an implementation plan and funding have fueled serious concerns about its overall implementation in practice. A recent publication by the First Nations thinktank, the Yellowhead Institute, identified five areas of existing concern in relation to the enacted law, despite improvements to earlier draft versions of the legislation. These concerns relate to […] and **the absence of any dispute resolution mechanism and data collection. In NWAC’s view these concern[s] may undermine the potentially positive impact of the law in practice.**

[emphasis added]

[xviii] For example: UN Committee on the Rights of the Child, General Comment 11, at para 24: “For example, the Committee highlights, in particular, the need for data collection to be disaggregated to enable discrimination or potential discrimination to be identified”
[xix] At pp 18, 20.
[xx] At p 18.
See also the submissions from Participation and Knowledge Translation in Childhood Disability Lab on the general lack of data collection regarding children with disabilities (at p 5). Additionally, the lack of a monitoring system with regard to the Convention in general is raised in the submissions to the Committee for the 5th/6th review by organizations such as the Colour of Poverty (at pp 4-5) and Child and Youth Rights in BC (at pp 5, 7).
[xxi] La Commission spéciale sur les droits des enfants et la protection de la jeunesse, "Instaurer une société bienveillante pour nos enfants et nos jeunes, résup du rapport", April 2021, online : <https://www.csdepj.gouv.qc.ca/fileadmin/Fichiers_clients/Rapport_final_3_mai_2021/2021_CSDEPJ_Rapport_Resume_version_finale_numerique.pdf>.
[xii] At p 7.