

A photograph of three young children in a playroom. On the left, a boy in a red shirt and blue overalls. In the center, a girl in a white shirt and blue overalls with a pineapple patch, holding a red ribbon. On the right, a boy in a white shirt and blue overalls. They are surrounded by toys like an abacus, alphabet blocks, and a soccer ball. Educational cards with letters and numbers are on the wall.

March 2020
NGO Report

**Close Gaps through
Systemic Change:**

Implement Children's Rights in Canada

Alternative Report for the 5th/6th Review of Canada
Under the Convention on the Rights of the Child

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Canadian Coalition
for the Rights of Children
Coalition canadienne
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Table of Contents

Introduction	1
1. General Measures of Implementation	3
1.A. Response to previous recommendations	3
1.B. Systems for Implementation	3
1.B.1. Legal Measures	4
1.B.2. Coordination	5
1.C. Allocation of Resources/Budgeting	7
1.D. Data Collection and Analysis	8
1.E. Independent Monitoring	10
1.F. Awareness of Rights and Dissemination of Reports	11
3. General Principles	12
3.A. Non-Discrimination	12
3.B. Best Interest of the Child	12
3.C. Respect for Views of the Child	13
4. Civil Rights and Freedoms	16
4.A. Media and Privacy	16
5. Freedom from Violence	16
5.A. Ending All Forms of Violence	16
5.B. Corporal Punishment	17
6. Family Environment and Alternative Care	18
6.A. Child Welfare	18
6.B. Early Childhood Development and Care	20
7. Basic Health and Welfare	21
7.A. Child Poverty	21

7.B. Food Security	22
7.C. Social Determinants of Health	23
7.D. Youth and Homelessness	24
7.E. Healthy Environment	24
7.F. Mental Health	24
7.G. Children with Disabilities	26
8. Education, Leisure, and Cultural Activities	26
8.A. Education Systems	26
8.B. Right to Play	27
9. Special Protection Measures	28
9.A. First Nations, Metis, and Inuit Children	28
9.B. Racial Minority Children	28
9.C. Children in the Refugee System	28
9.D. Child Labour	29
9.E. Children in the Criminal Justice System	29
9.F. Access to Justice	31
Appendix A - Full List of Recommendations	
Appendix B - Canada and Article 12	

The Canadian Coalition for the Rights of Children: On-going advocacy for implementation

The Canadian Coalition for the Rights of Children (CCRC) is a national umbrella group of organizations and individuals committed to the full implementation of the Convention on the Rights of the Child in Canada and globally. It pursues its mission through public education, policy analysis, advocacy, and monitoring progress in Canada.¹

Governments in Canada do not provide any funding for civil society monitoring of children's rights. The CCRC relies on voluntary contributions from member organizations and individuals, which limits the capacity for detailed analysis and regular engagement with young people.

For the 3rd/4th review of Canada, the CCRC worked with a broad range of civil society organizations to compile a comprehensive overview of the situation of children in Canada, entitled *Right in Principle, Right in Practice*. Its main theme was that implementing children's rights in Canada is both the right thing to do and of practical benefit to children and Canadian society.²

Following the 3rd/4th review, the CCRC followed-up the Concluding Observations in an on-going strategy that was designed to make the process more productive, including:

- A public call for an action plan within a year, proposing 10 Practical Steps Canada could take;³
- Distributing a youth-friendly version of the Concluding Observations, prepared in cooperation with the Office of the Ontario Children's Advocate and UNICEF;⁴
- On-going advocacy on specific issues, relating them to previous recommendations;
- A fact sheet on follow-up to the major recommendations in 2016;⁵
- An early letter proposing a more effective process for the 5th/6th review in 2017;
- Engagement in an initiative to improve implementation of all human rights obligations in Canada;
- A call for action and a national conference on five major areas for attention in 2018; and
- A series of public fact sheets on important issues in the review during 2019.⁶

For this 5th/6th review, the CCRC alternative report will strategically focus on follow-up to previous recommendations that would be of benefit in Canada. Priority is given to general measures of implementation that relate to all rights and all children. This reflects our analysis that the machinery of government is a major barrier to progress in Canada and that taking previous recommendations seriously would help to address major issues in Canada. Members and other organizations will submit reports on specific aspects of the reality for children in Canada, illustrating the depth of civil society support for stronger implementation.

The CCRC continues to advocate for a more productive approach to the review process in Canada, in keeping with the purpose of monitoring in the Convention and good practices in other countries.

The Role of Duty-bearers: Introduction to CCRC Analysis for 5th/6th Review

Two themes stand out in the CCRC's review of what has happened for children's rights in Canada between the 3rd/4th review and the 5th/6th review:

- Greater awareness of the high costs for children and society when children's rights are ignored; and
- Growing evidence that taking children's rights seriously could make Canada's federalist system of governance work better for children, families, and governing bodies.

These themes continue the central message of *Right in Principle, Right in Practice*, but implementation of the Convention in Canada remains very weak. Evidence of serious gaps and system failures, with serious consequences for children, have been documented in the period since the last review and are referenced in relevant sections of the report. These range from the ruling of the Canadian Human Rights Tribunal on "willful and reckless" discrimination against First Nations children in child welfare systems to evidence in annual UNICEF reports that Canada falls behind comparable countries on many indicators of child well-being.

Canada was a leader and early adopter of the Convention on the Rights of the Child. Canada's Prime Minister and senior ministers make public statements in support of the Convention and position Canada as a global leader in human rights, but children's rights are rarely incorporated into legislation or policy documents in parliament. Support for children and families features prominently in political discourse at election time, but there is no coherent or comprehensive policy framework in place. Senators and Members of Parliament invite children to parliament hill every National Child Day and speak appreciatively about the value of listening to children, but the views and interests of children are missing during debates of laws and policies that affect them. In 2015, a Minister for Families, Children, and Social Development was appointed, but the mandate does not include children's rights or coherence across departments. During the most recent session of Parliament, the Prime Minister served as a Minister for Youth with a Youth Advisory Council that focused on specific issues, but did not adopt a rights-based approach to youth policy.

In addition, in 2017, on the 70th Anniversary of the UN Declaration of Human Rights, a high-level conference of federal and provincial ministers made a commitment to improve implementation of human rights conventions in Canada in two specific ways:

- By developing a protocol for improved response to previous recommendations; and
- More meaningful engagement of civil society in the reporting and monitoring process.⁷

This review of children's rights is a strategic opportunity to show improvement on these two commitments, but so far it continues previous patterns: failing to take recommendations seriously; failing to provide accurate data and analysis about the situation of children in Canada; reporting a few positive steps while ignoring evidence of serious issues; and no meaningful consultation with civil society. So far the review is not meeting its purpose, which is taking stock and making improvements so that children can realize their rights in Canada.

A big gap remains between high-level commitments and practice in Canada. Government departments and agencies fail to translate the Convention into proposed legislation and policy documents that come before cabinets, parliament and legislatures for consideration. One result is that, while there have been significant increases in funding for children, such as the Canada Child Benefit, the outcomes for children, as measured by UNICEF indicators of child well-being, have not improved substantively. Too many children continue to fall through the cracks of fragmented support systems.

Taking children's rights seriously is a critical missing piece in Canadian public policy. The CCRC has continued to show that implementation of the Convention on the Rights of the Child would benefit Canada by providing greater coherence in policies across departments and levels of government in Canada's federalist system. It also brings a strong focus on outcomes, evidence-based decision-making, and support for children to reach their full potential. As part of this approach, it is essential to improve

the monitoring and reporting system for children in Canada.

In line with that goal, each section of this report will focus on four key elements:

1. Positive steps in good governance for children's rights;
2. Failures to implement past recommendations that would help Canadian children;
3. Questions the Canadian government needs to answer; and
4. Recommendations for actions to improve the systems of governance in Canada

1. General Measures of Implementation

1.A. Response to Previous Recommendations

Each section of this report will focus on relevant previous recommendations. In general, systemic recommendations after each review have been ignored, in spite of follow-up advocacy by civil society organizations. No reasons have been given for ignoring recommendations that could improve implementation in Canada.

Canada's official report for this review is a continuation of this pattern: it lists some good initiatives, but ignores many elements of the Committee's concluding observations from the last review, especially if those recommendations called for substantive and systemic change. It does this in spite of a ministerial level direction to improve response to recommendations in treaty body reviews. Canada's official report ignores recommendations from the first and second reports, although Canada was specifically asked to respond to earlier recommendations that it previously ignored. Many of those recommendations are still relevant for children in Canada, such as recommendations related to housing and street children (an issue that will be addressed in detail in a separate alternative report).

1.A.1. Recommendations

1. Given the repeated failures to respond to previous recommendations, the CCRC recommends that Canada be asked to file an action plan within one year of receiving the Concluding Observations from this review. The action plan should include what steps will be taken on accepted recommendations and the reasons for rejecting other recommendations.

1.B. Systems for Implementation

Canada cannot continue to legitimately claim that the current systems for protecting children's rights are adequate, as the official report does. Significant gaps and system failures, with serious consequences for children, have been documented in the years since the last review, including the following:

- the Canadian Human Rights Tribunal ruling on “willful and reckless” discrimination against Indigenous children in child welfare and health care, which continues to be unresolved;
- evidence of systemic causes of over-representation of racial minority groups in child welfare, criminal justice systems, and school drop-out rates, that would be addressed if children’s rights were taken seriously;
- the findings in the report of the National Inquiry into Missing and Murdered Indigenous Women and Girls, which explicitly calls for improved implementation of the Convention on the Rights of the Child;
- several provincial court rulings such as the Sixties Scoop cases; systemic findings in reports on specific cases, such as the Tina Fontaine case; and more gaps in provincial monitoring and advocacy, such as the closure of the Ontario Office of the Children’s Advocate; and
- the low rank of Canada on many indicators of child well-being, in annual UNICEF reports on progress for children in comparable countries.

Tinkering with the status quo will not close the gaps for children in Canada. The CCRC recommends a systems approach and structural reform at both national and sub-national levels in the following areas.

1.B.1. Legal Measures

Some progress has been made in the explicit recognition of the Convention and its central principles in An Act respecting First Nations, Inuit, and Metis children, youth, and families, (Bill C-92 passed in June, 2019), which established a new approach to child welfare for these children. Important principles of the Convention were also incorporated into An Act to amend the Divorce Act, the Family Orders and Agreements Enforcement Assistance Act, and the Garnishment, Attachment and Pension Diversion Act (Bill C-78), which made significant reforms to strengthen respect for children’s rights in Canada’s family court system. The CCRC advocated for and welcomed these changes; we also called for significant legal education and public education to ensure these changes are properly implemented across the country.

At the same time, the Convention and children’s rights were not incorporated into major pieces of legislation and policy where they should have been recognized, often in spite of advocacy for such recognition. These include: Canada’s national poverty strategy, the national framework for early childhood education and care, the national strategy on gender-based violence, and a new youth policy, among others. In addition, Justice Canada claimed the Cannabis Act was consistent with the Convention while UNICEF Canada and other child rights experts presented evidence that it was not; the criteria used by Justice Canada to make its determination in this and similar cases has not been made available for public scrutiny.

The lack of consistency and coherence reflects the failure to systemically include children’s rights in domestic legislation. The Committee’s analysis in the concluding observations for the 3rd/4th report remains as true today as it was in 2012:

“the absence of such overall national legislation has resulted in fragmentation and inconsistencies in the implementation of child rights across the State party.”

1.B.1.a. Response to a previous recommendation that would be of benefit in Canada

Canada did not respond to the recommendation to find:

“the appropriate constitutional path that would allow it to have in the whole territory of the State Party, including its provinces and territories, a comprehensive legal framework which fully incorporates the provisions of the Convention and its Optional Protocols and provides clear guidelines for their consistent application.”

1.B.1.b. Questions for Canada to answer

- *Why has Canada ignored the recommendation to find a way to make the Convention part of domestic law?*
- *What criteria does Justice Canada use to determine if proposed legislature complies with and advances fulfillment of Canada’s duties under the Convention?*

1.B.1.c. Recommendations

1. Introduce and adopt legislation on implementation of the Convention at the national level, with a timetable of ten years to bring existing legislation into compliance.
2. Use Children’s Rights Impact Assessments (CRIAs) for all proposed laws and programs that affect children, to ensure consistency with the Convention, starting at the national level.
3. Pursue agreement between national and sub-national governments to use CRIAs for all legislative and program changes that have a significant impact for children 0-18 in their jurisdictions.

1.B.2. Coordination

1.B.2.a. Coordination between national and sub-national governments

Adjustments in the mandate of the Continuing Committee of Officials for Human Rights (CCOHR) have resulted in the State party’s report containing a broader sample of provincial and territorial initiatives than was included in their 3rd/4th report. However, Canada’s report still does not include analysis of outcomes for children in all provinces and territories, or comparisons that could inform an assessment of equitable treatment of children—one of the core principles of the Convention and a repeated recommendation of previous reviews.

While civil society groups, including the CCRC, have invested considerable time and effort in consultation with the CCOHR on how it conducts these reviews, to date the 5th/6th review process shows no substantive improvement over the last one.

For this review the CCRC is working with members in some provinces to provide alternative reports that focus on specific provinces as duty-bearers.

1.B.2.b. Coordination within the national government

The CCRC welcomed the appointment of a Minister for Families, Children and Social Development, who has contributed to Canada's progress in addressing child poverty and developing a more robust early childhood policy within the Economic and Social Development Department. The Minister, in spite of their title, has no mandate for coherence in policy for children across government departments.

The Interdepartmental Working Group on Children's Rights (Working Group), the current coordination mechanism for children's rights within the federal government, has proven ineffective as constituted. The mandate amounts to little more than the sharing of information, without adequate seniority or authority to co-ordinate policy and programs to effectively implement the Convention. This lack of senior leadership has also led to a lack of accountability for the failure of the Working Group to make meaningful progress in the implementation of children's rights.

Another weakness is the lack of any mechanism for meaningful consultation with youth and civil society organizations that could inform a whole-of-government approach to children's rights. The few interactions with civil society seem over-determined by the short-term objectives of the Working Group themselves, including their reporting requirements.

The co-chairs of the Working Group are officials within Health Canada and Justice Canada, and the Department of Indigenous Affairs is also represented. All three of these departments have been heavily implicated in the Canadian Human Rights Tribunal on First Nations child and family services, which recently found these same departments to have "willfully and recklessly" discriminated against First Nations children on the basis of race. Their leadership of the Working Group at the same time that their departments continue a protracted 12-year legal battle against First Nations children and their advocates not only represents a clear conflict of interest, but should raise further questions about the Working Group's efficacy.

1.B.2.c. Response to a previous recommendation that would be of benefit in Canada

The status quo falls far short of the recommendation to:

"Establish a coordinating body with the stature and authority as well as the human, technical, and financial resources to effectively coordinate actions for children's rights across sectors and among all provinces and territories... [and] "consider strengthening the Interdepartmental Working Group on Children's Rights accordingly thus ensuring coordination, consistency, and equitability in overall implementation of the Convention."

Another recommendation is that civil society organizations be part of the coordinating mechanism. Not only are CSOs excluded, but there has been no on-going consultation. In the case of this review, the input of CSOs in response to a draft outline is misrepresented in the summary provided as Appendix B.⁸

1.B.2.d. Questions for Canada to answer

- *Why does the Minister for Families and Children not have a leading role in the coherence and coordination of policies that affect children's rights?*
- *If the Working Group 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?*
- *In light of the government's acceptance of the findings of the Canadian Human Rights Tribunal ruling, what changes will be made to current systems to protect all children's rights?*
- *Why does Canada continue to reject recommendations to strengthen coordination mechanisms?*

1.B.2.e. Recommendations

In 2018, the CCRC analyzed why Canada's current system is failing children and presented a proposal for improvement. A systems approach to implementing children's rights in Canada could address the challenges of federalism and ensure input by affected parties, transparency, and accountability.⁹

The CCRC recommends the following structural reforms for effective implementation:

1. Senior level coordination between federal departments through an inter-departmental body that provides direct input into decision-making by cabinet committees, with input from young people, civil society, and Indigenous peoples through a children's commission rooted in the Convention.
2. Establishment of a senior level federal/provincial/territorial/first nations coordination mechanism to be responsible for coordinating implementation between jurisdictions and public reporting, with delegated decision-making authority, annual ministerial level meetings, and input from a children's commission rooted in the Convention. Co-ordination would respect a nation-to-nation relationship between the federal government and first nations, while holding all duty-bearers accountable under the Convention.
3. Child-friendly complaints mechanisms at federal/provincial/first-nations levels, based on recognition of the Convention in Canadian law as the guide for implementing the Charter of Rights and Freedoms for children.
4. Ratification of the Third Optional Protocol to the Convention so children in Canada can also use the complaint procedure established under the Convention.

1.C. Allocation of Resources/Budgeting

Significant additional resources have been allocated to support children and families since the last review. Some of the discriminatory tax measures that were in place at the time of the last review were discontinued in the 2016 budget. Significant progress has been made in the use of gender-based analysis in the budget process. There is, however, no evidence to show that the 2018 budget

included an assessment of the impacts on children specifically, as Canada's official report claims. The Committee's assessment in 2012 is still accurate:

The State party does not use a child-specific approach for budget planning and allocation, this making it practically impossible to identify, monitor, report, and evaluate the impact of investments in children.

1.C.1. Response to previous recommendations that would benefit Canada

Canada's report lists a few new budget initiatives instead of seriously addressing the four parts of the recommendation for effective budgeting to support children's development:

1. A budgeting process which takes into account children's needs at all levels;
2. Specific indicators and a tracking system;
3. A mechanism to monitor and evaluate the efficacy, adequacy, and equitability of the distribution of resources allocated to implement the Convention, and;
4. Strategic budget lines for children in disadvantaged situations that would be protected even in the context of economic crisis or emergencies.

1.C.2. Questions for Canada to answer

- *What evidence is there that children's rights were systematically considered in the application of GBA+ during the 2018 budget process?*
- *What mechanisms exist at national and sub-national levels to evaluate the efficacy and equitable distribution of resources allocated to support child development?*

1.C.3. Recommendations

1. That the Parliamentary Budget Office be asked to include a mechanism to report and track expenditures for children in its regular budget analysis.
2. That the Auditor General be asked to do an assessment of the equitable impact of resources allocated for children, including resources transferred to provinces through revenue-sharing agreements in the areas of health, economic development, and social policy.

1.D. Data Collection and Analysis

The official report for this review includes more data on children in Canada than the previous report, but there are still major gaps and little analysis of the data to inform policy choices. The pending report of a 2019 Statistics Canada Health Survey of Children and Youth may provide more helpful data

(expected in March 2020). The province of New Brunswick publishes an annual report on the State of the Child, which is a model for analysis and public reporting on factors that affect the well-being and rights of children.

In 2015, the Truth and Reconciliation Commission on Indian Residential Schools (TRC), as one of its Calls for Action, called for the publication of annual reports on the number of Aboriginal and non-Aboriginal children in care, reasons for apprehension, spending on child welfare, and evaluations of effectiveness.¹⁰ The lack of data about children in the care of the state was a significant issue in the previous review. The TRC recommendation, if implemented, would help to provide accountability for the treatment of children in all child welfare systems. Currently, the data that does exist is kept internal to the relevant ministries, and very little is made available to the public—further complicating the efforts of communities to hold these systems to account. Canada’s official report still lacks accurate data on children in care.

1.D.1. Response to previous recommendations that would benefit Canada

Canada provided an appendix of isolated data sets as its response to a recommendation:

to set up a national and comprehensive data collection system and to analyze 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.

1.D.2. Questions for Canada to answer

- *What was done to address and remove the barriers to providing accurate data after it was recognized by the government as a major problem in the last review?*
- *Canada has said it will fulfill the TRC Calls to Action; when will it fulfill the basic call to provide annual reports on the children in the care of the state in child welfare systems across the country?*
- *If some data is missing because sub-national governments refuse to provide it, why not publicly report those gaps and allow children and families to hold their governments responsible instead of letting provinces hide behind the federal government?*

1.D.3. Recommendations

1. Given the slow progress within the government and available expertise in civil society, the CCRC recommends that Canada convene a group of experts to develop a data base that would meet the criteria named in the Concluding Observations from the 3rd/4th review. Public reporting, including the gaps in data from some provinces (the reason given by federal officials for poor data collection and analysis), would allow parents, children, and civil society organizations to hold all levels of government accountable for implementing children’s rights.

1.E. Independent Monitoring

Various proposals to establish a National Children's Commissioner have not been adopted. Canada's report claims that provincial children's advocates or representatives "promote and protect children's rights and allow children to pursue remedies for violations of their rights." The reality is that, while the existing provincial offices are helpful, many violations of children's rights are not reported and many children have no avenue for redress. The existing provincial and territorial offices do not fulfill the obligations of duty-bearers under the Convention.

While all the provincial and territorial child advocate offices now report to their respective legislatures, their mandates vary widely; resources to fulfill their mandates vary widely; and they remain vulnerable to political shifts, as witnessed in the sudden closure of the Ontario Child Advocate office after the 2018 provincial election.

Provincial advocates cannot be effective if they are the principal or only way that provinces take children's rights seriously. Relying on advocates to raise awareness, advise departments, respond to calls from individual children, advocate for systemic change within governments, and hold governments accountable is unrealistic and creates internal conflicts of interest. The fact that provinces have an advocate can become an excuse for not integrating children's rights into legislation, policy and the performance criteria of officials within departments that serve children, such as education, child welfare, and public health. While most advocates are technically independent in that they report to legislatures, they can be vulnerable themselves if they speak out strongly on sensitive issues.

There is limited research on good practices within such offices, few evaluations of their effectiveness, and no public evaluations done by the young people whom they serve. The degree to which children can meaningfully participate and have effective agency through the existing offices varies widely. Other factors affecting effectiveness include: training of child advocate staff in children's rights; capacity of staff to address different aspects of children's rights and work with different groups of children; and the ability of the person holding the position of advocate to be persuasive within government structures. Provincial advocates point to successful interventions in individual cases and specific issues. When requests from children fall outside limited mandates, children are left with no place to go. Systemic issues that affect children under their mandates, such as child poverty, are not raised by many advocates.

While more detailed evaluations are needed, it seems fair to say that none of the current offices completely fulfill the criteria for effectiveness established in General Comment 2 and in the Paris Principles for Independent Human Rights Institutions.

1.E.1. Recommendations

1. Provincial legislation on children's rights include provisions for implementation throughout relevant departments, including the performance criteria of senior department officials, as well as through the offices of children's advocates.
2. That the mandates of provincial children's advocates be broad enough to cover all complaints about

infringements, violations, and systemic issues such as resource allocations for children.

3. That regular evaluations be done to inform good practices within such offices, especially in areas such as participatory rights, youth-friendly avenues for redress, and systemic outcomes.
4. That a National Commission for Children be established to address gaps and inequities between jurisdictions and a National Commissioner to monitor accountability within federal jurisdiction.

1.F. Awareness of Rights and Dissemination of Reports

Canada was asked to use provincial curricula and government websites to inform children about children's rights, a practical recommendation. A CCRC survey of provincial education curricula in 2017 showed that no province requires that children be taught about children's rights. In some curricula, it is a discretionary topic under global issues. Citizenship courses in the middle grades include charter rights, but not specifically children's rights.¹¹ It is not easy for children to find out about children's rights on current federal or provincial government websites. There are several positive civil society initiatives to teach children about children's rights, working with schools and community groups. These need to be scaled up in order to change the continuing reality that a majority of children in Canada have not been informed about children's rights and how they can exercise them.

Reports and Concluding Observations are posted on an obscure section of the government of Canada website; they are not easily accessible by highly motivated adults, let alone young people. After the last review, a youth-friendly version of the Concluding Observations was prepared, with the support of the Office of the Ontario Children's Advocate, but it was not distributed by governments. For months after its submission, Canada's report for this review was available on the CCRC website but not on the Government of Canada website.

1.F.1. Recommendations

1. That every province in Canada be asked to table a plan for teaching children about children's rights, including integration into required curricula before the next review.
2. That the federal government work with civil society to develop and maintain a website that includes child-friendly resources to learn about children's rights and how children can exercise them, and a site for information-sharing among young people and civil society organizations who support children in the exercise of their rights. This website could also make reports, concluding observations after reviews, and alternative reports by civil society groups easily accessible for everyone interested in the implementation of children's rights in Canada.

3. General Principles Articles 2, 3, 6, 12

3.A. Non-discrimination

The Concluding Observations from the last review included several recommendations relating to equitable access to services for various vulnerable groups. Some progress has been made toward more equitable treatment of First Nations children and for children with disabilities through the *Accessibility Act*. A new Anti-Racism Strategy 2019-2022 recognizes the need for better data and includes some steps to collect and analyze disaggregated data to better inform policy and programs to reduce inequities.

While Canada's official report claims that all governments have measures to ensure equal access to services for children, it provides no evidence of an equity analysis to support that generalization. Evidence of discriminatory treatment of specific groups will be provided in separate reports by agencies who work directly with children in those groups.

3.A.1. Recommendations

1. Given the government's position that the current system provides equal access to services and continuing evidence by civil society groups of inequitable access, the CCRC recommends that Canada establish a child-friendly complaint mechanism with the authority to investigate and order remedies as appropriate.

3.B. Best Interest of the Child

Progress has been made in amendments to the Divorce Act that make the best interest of the child the paramount principle and set out specific criteria for determining the best interest of the child, including consideration of the views of the child, in family court cases. The CCRC advocated for this change and also proposed that Justice Canada engage in a strong program of public legal education and public education to ensure effective implementation and increase public understanding of both principles for other areas of law as well.

3.B.1. Response to previous recommendations that would benefit Canada

Canada was asked to ensure that the best interests of the child is consistently applied in all

legislative, administrative, and judicial proceedings, to provide guidance for determining the best interests of children, and disseminate that guidance widely. Implementation of this recommendation would contribute to greater coherence, consistency, and equitable treatment for children.

3.B.2. Questions for Canada to answer

- *What is the barrier to making determination of the best interests of the child applicable to all decision-making processes for children, with guidance for such determinations?*

3.B.3 Recommendations

1. Given the very limited progress in application of this principle in Canada, the CCRC recommends that Canada convene a multi-stakeholder, multi-disciplinary conference, drawing on the conference sponsored by the CCRC in 2009, to develop a strategy for universal application of the best interests of the child principle by the time of the next review.

3.C. Respect for Views of the Child

Progress toward implementation of Article 12 was made in the area of family law. Considering the views of the child is now a legal requirement in matters relating to divorce and parenting arrangements. This is one important area of law that affects children; the same legal requirement should be included for other areas of law that affect children.

Canada's official report cites the growing use of youth advisory groups as implementation of Article 12 without any analysis of their effectiveness. For this review the CCRC offers a preliminary analysis of the adequacy and effectiveness of this option, in comparison with other options, to inform next steps for implementation of Article 12 in Canada (Appendix B).

Child and Youth Advisory Committees and Implementation of Article 12

The use of youth advisory committees is one means to hear the views of children. Research suggests that it is limited in terms of effectiveness and is inadequate without other means as well. Limitations include:

- Representation of the diversity of children and youth: Size and practical logistics make it difficult to adequately reflect the wide diversity of young people across Canada. Children who apply and are chosen for youth advisory bodies are often those who are highly motivated to be involved; recruitment of marginalized and hard-to-reach youth is difficult. Children under 12 are rarely included.
- Power dynamics within the group: Experience varies widely in terms of how much agency young people have within different groups. Funding, group process, quality of adult facilitation, logistics

of meetings, and other factors can contribute to unequal power dynamics, in spite of the best intentions.

- Transparency: There is often a lack of transparency about how the views expressed in meetings are represented in the outcomes. This is particularly problematic when governments announce that decisions are informed by youth advisory committees but there is no record of the process used or what young people actually said, or input is “summarized” in line with government plans. The state party report of youth views for this process is a case in point; the summary does not include many points made by the young people that are relevant for assessing how well their rights are being realized.
- Feedback to young people: Lack of feedback to young people involved in consultations can leave young people feeling their participation was “tokenistic” or even manipulative, done to meet some requirement, add legitimacy, or good public relations, without follow-up and genuine change or reasons why there is no change.

While useful as one means of youth participation, the limitations of youth advisory groups point to the need to give equal or more attention to more robust means of implementing Article 12.

Within civil society there has been significant expansion in the development of good practices for considering the views of children in a variety of contexts. The CCRC is confident there are sufficient models for good practice and experience to make it a requirement; doing so would encourage more equitable treatment and a shift toward a more rights-respecting culture.

Deficiencies in the Current Approach to Article 12

Under Article 12, Canadian governments are obligated to introduce legislative, procedural, and administrative measures to ensure respect for the views of all children, in all matters that affect their lives. Current approaches fall far short of including all means, all children, and all matters that affect them.

Three Steps for Effective Implementation of Article 12

As a basis for discussion, the CCRC offers the following three components for a more effective strategy, to be implemented in parallel before the next review.

1. Creating a conducive environment and culture of respect for children’s views
Implementing children’s participation rights requires cultural and societal shifts, supported by a legal mandate and public education. Parent education programs, which have been successful elsewhere, have limited reach in Canada, are narrow in scope, and are limited by a lack of funding and weak evaluations (See appendix B for more details). Teaching children about their rights and how to exercise them in schools has shown benefits, but it only happens in small, sporadic initiatives. Annex 3 to Canada’s official report shows that most children are not informed of their rights and how to exercise them. Adult education is also needed to build the capacity of professionals who engage with children to facilitate, listen, and respond appropriately to children’s views.
2. Legally requiring consideration of children’s views in all official decisions
In Canada, children’s legal entitlement to have their views heard in judicial or administrative proceedings varies widely by jurisdiction, as well as in different areas of law. In Ontario, for example, a child’s right to education can be blocked by expulsion without the child having any opportunity to have their views heard or considered; this violates due process under Canadian law as well as the fundamental principles of the Convention. Children across Canada are treated inequitably when it comes to legal recognition of children as persons with rights, including the basic rights of due process and having their views and best interests considered in decisions that affect them.

3. Establishing effective mechanisms to facilitate children's participation

Children who learn about their rights express frustration with the lack of avenues for them to exercise their rights. Existing avenues are fragmented and limited in scope, which results in having to turn away young people with legitimate claims because of factors outside the legitimacy of the issues being raised (See appendix B and the section on access to justice for more details). Child and youth-friendly mechanisms at national and sub-national levels need to be established at the same time as public education to avoid creating unrealistic expectations and to enable children to learn through exercising their rights within accessible systems.

3.C.1. Response to previous recommendations that would benefit Canada

Previous recommendations called on Canada to do two things:

1. Make considering the views of the child a requirement for all official decision-making processes that relate to children, and;
2. Establish an appeal mechanism to hear complaints if the right to be heard is violated in judicial and administrative proceedings.

3.C.2. Questions for Canada to answer

- *What is the barrier to making consideration of the views of the child a requirement in all official decision-making processes that affect the rights of the child?*
- *What is the reason for rejecting the recommendation to establish a youth-friendly appeal process, which would nudge change in the direction of respecting the rights and views of children?*

3.C.3. Recommendations

The CCRC recommends that:

1. A robust evaluation be done to inform the expanding use of youth advisory groups within governing bodies as one means for implementing Article 12. The results should be made public and used to inform good practices to realize Article 12 rights.
2. Canada lead a program of legal review and reform to fully implement Article 12 through all means, for all children, in all areas of law that affect children's lives.
3. National and sub-national governments each establish child and youth-friendly mechanisms within their areas of jurisdiction for hearing and resolving appeals when children's rights to have their views considered are not upheld.
4. A national capacity-building program be developed and implemented to include parent education, informing children how to exercise their rights, and training professionals to exercise their duties to meaningfully listen and act upon the views of children when appropriate.

4. Civil Rights and Freedoms Articles 7, 8, 13, 14, 15, 16, 17

4.A. Media and Privacy

Provisions in the Convention relating to media could be helpful in Canada to resolve tensions between access to information, protection from exploitation, and privacy. These issues will be addressed in a separate report that draws on significant engagement with young people on these important issues.

5. Freedom from Violence Articles 19, 39, 24(3), 37a, 28(2), 34

5.A. Ending All Forms of Violence against Children

The CCRC has had an on-going engagement with relevant officials in the Public Health Agency to advocate for a more comprehensive approach to preventing all forms of violence, to implement Article 19 of the Convention. In 2018, Canada announced it would become a Pathfinding Country in the global End Violence Initiative. In June, 2019, the CCRC, UNICEF, and PrevNet co-hosted a national civil society consultation, with support from PHAC, to strengthen a proposed road map.

A research report on violence against children in Canada was prepared for the consultation. It documents high rates of violence across a spectrum of types and ages and gaps in legislation and support for children affected by violence.¹² The consultation focused on causes, good practices, and what could be done to close gaps and be more effective in preventing violence.¹³ The government's roadmap was released before the findings of the consultation could be incorporated. While it includes a number of helpful initiatives, it lacks a comprehensive approach, a mechanism to coordinate implementation, and measurable objectives that can be monitored and reported. The CCRC disagrees with the contention that current laws are adequate to prevent all forms of violence. The recommendations below draw from the consultation.¹⁴

5.A.1. Response to previous recommendations that would benefit Canada

The current Roadmap falls short of previous recommendations to:

- develop a comprehensive national strategy to prevent and address all forms of violence;
- adopt a national coordinating network to address all forms of violence against children;
- allocate resources and ensure a monitoring mechanism; and
- ensure all child victims of violence have immediate means of redress and protection, and;
- effective follow-up support for victims of domestic violence after family reintegration.

5.A.2. Questions for Canada to answer

- *With appreciation for becoming a Pathfinder country, what steps will Canada take to strengthen its current Roadmap to more fully reflect the international INSPIRE framework?*
- *What will both national and sub-national governments do to make the Roadmap a national strategy that co-ordinates efforts across jurisdictions, as recommended in previous reviews?*
- *Why does the Roadmap not include monitoring and accountability, as recommended in the INSPIRE framework and previous recommendations?*

5.A.3. Recommendations

The CCRC recommends that Canada strengthen the Roadmap by:

1. Establishing a legal framework that clearly reflects Article 19, including repeal of section 43 of the Criminal Code which legitimates corporal punishment.
2. Developing and implementing an effective monitoring and reporting system for violence against children, under national leadership, including annual reports that map data about violence, access to programs, and outcome data to show progress over time.
3. Establishing a focal point for on-going coordination and collaboration between government agencies and civil society organizations to be more effective in prevention efforts.

5.B. Corporal Punishment

Detailed analysis of this issue will be provided in a separate report by members with subject expertise on the impacts of corporal punishment. The Truth and Reconciliation Commission also recommended prohibiting corporal punishment as one of its 94 Calls to Action. Although the government committed to implement them, it did not include repeal of section 43 in a bill it introduced to remove outdated provisions in the criminal code. Government officials state a preference for using public education; the CCRC supports more education but notes that government websites and other tools need to be strengthened in order to properly inform the public about research findings on the harmful impacts of using corporal punishment, and to expand the reach of positive parenting education programs to all parents.

5.B.1. Response to previous recommendations that would benefit Canada

Contrary to the justification provided in the State party report, differences in public opinion are not a valid reason for rejecting repeated recommendations to repeal section 43 and explicitly prohibit all forms of violence against all age groups of children. Children's rights should not be a

matter to be decided by majority opinion.

Statements that Canada complies with Article 19 by excluding corporal punishment from its definition of violence are counter-productive for the stated goal of encouraging non-physical discipline. It also contradicts the findings of international research on the connections between corporal punishment and other forms of violence against children. The lack of clarity in responses on this issue is harmful for children.

5.B.2. Questions for Canada to Answer

- *What is the reason for not implementing the TRC Call to Action to prohibit corporal punishment, which is also broadly supported by more than 600 organizations and professionals who work with children?*

5.B.3. Recommendations

1. The CCRC recommends that Canada introduce legislation to explicitly prevent all forms of violence against children, including repeal of section 43, and implement a national public education strategy based on research about the impacts of corporal punishment and other forms of violence, parenting alternatives, and the Truth and Reconciliation Commission.

6. Family Environment and Alternative Care Articles 5, 9, 10, 11, 18, 20, 21, 25, 27.4, 39

6.A. Child Welfare

Progress is being made to reform federal Indigenous child welfare services; new legislation (known as Bill C-92) is more consistent with children's rights, including explicit recognition of the Convention. Substantive review and reform of provincial child welfare systems is also needed, for the benefit of both Indigenous and non-Indigenous children.

In 2018 the CCRC reviewed provincial child welfare legislation in light of the Convention and highlighted major gaps in the following areas:

- Data and accountability: Greater transparency and accountability have also been recommended by other civil society and international organizations, including the Truth and Reconciliation Commission Calls to Action #2 and #55. Publication of annual reports with accurate data is essential

for accountability.

- Legislative reform: Provincial laws vary widely with regard to the following basic elements:
 - Criteria for determining best interests of the child: Lack of clarity and a failure to consider all rights of a child, in line with General Comment 14, leads to inequitable treatment.
 - Consideration of the views of a child: Provisions are often lacking to inform children of their rights, establish child-friendly processes, and ensure access to review and appeal processes for decisions that affect them; this is especially true for children under age 12.
 - Service provisions: Requirements to fulfill the state's duty to provide services to parents of vulnerable children so that removal is a last resort are often missing, including standards and allocation of resources.
 - Preserving cultural and community connections: Provisions to protect these aspects of a child's rights are uneven and often weak.¹⁵

A 2018 survey of social workers in child welfare systems, done by the Canadian Association of Social Workers, reinforced the need for systemic reforms to protect the rights of children.¹⁶

6.A.1. Response to previous recommendations that would benefit Canada

Previous recommendations called on Canada to: use preventive measures to avoid the separation of children from their families; ensure the need for placement in institutional care is assessed by competent, multi-disciplinary teams of professionals and that such placements occur only for the shortest reasonable time, with regular judicial review; improve selection criteria, training, support, and regular evaluation for out-of-home child care workers, and; work with minority communities on options such as kinship care to maintain cultural and community connections.

While Canada's report lists some positive initiatives and some provinces are reviewing child welfare policies, there is no systematic approach with clear public accountability. Without that, many children continue to fall through the cracks, which has been documented in studies that link being in care with greater likelihood of becoming a street youth or ending up in the youth criminal justice system. Children are also treated inequitably, depending on their location or other factors.

6.A.2. Questions for Canada to answer

- *Why do provinces and territories not include explicit protection of children's rights in child welfare legislation?*
- *What systemic changes are provinces making, as well as specific small initiatives, to fulfill their obligations as duty-bearers to protect the rights of children in care of the state?*

6.A.3. Recommendations

1. Federal, provincial and territorial governments use a rights-based framework to produce annual reports on children in care, in order to fulfill the TRC's Call to Action and to be accountable for the rights and well-being of the children in their care;
2. All provinces review and revise child welfare legislation to include relevant provisions of the Convention, drawing on the relevant General Comments for good practices.

6.B. Early Childhood Development and Care

Progress was made through the adoption of the Multi-lateral Early Learning and Childcare Framework in 2017 and the Indigenous Early Learning and Childcare Framework in 2018, as well as the expansion of parental leave policies. In 2019, the CCRC endorsed the analysis and recommendations prepared by Child Care Now to strengthen the current Framework,¹⁷ and distributed a fact sheet that focuses on: equitable access to early childhood support services, public accountability, and a rights-based approach to programming and education for young children.¹⁸

6.B.1. Response to previous recommendations that would benefit Canada

The current policy framework falls short of previous recommendations to improve quality and coverage by: increasing availability for all children through free or affordable care; establishing minimum requirements for training of workers and improvement of working conditions; and conducting an equity impact analysis of current expenditures on early childhood, including all child benefits and transfers, with a focus on children at higher vulnerability in their early years.

6.B.2. Recommendations

The CCRC recommends that Canada:

1. Explicitly recognize children's rights in the current multi-lateral framework and strengthen it by acting on the steps outlined in the Affordable Child Care for All Plan;
2. Use rights-based tools for planning, evaluation, and reporting to ensure accountability, and;
3. Embed children's rights in early learning programs, learning plans, programs for parents, and training of workers.

7. Basic Health and Welfare Articles 18, 23, 24, 26, 27

7.A. Child Poverty

The latest report by Campaign 2000 shows that 1.35 million children live in poverty in Canada. Poverty affects 18.6% of all children, 19.6% of pre-school children, and greater percentages among specific groups such as First Nations, racial minorities, and remote communities.¹⁹ For the purposes of this report, it is important to note that minimal progress has been made since 1989, when parliament celebrated adoption of the Convention by passing a unanimous resolution to end child poverty by the year 2000.²⁰ Canada ranked 21st out of 36 countries in a recent study of child poverty in comparable countries by the Organization for Economic Development Cooperation and Development.

Progress on ending child poverty has been minimal in spite of Canada's relative economic wealth, a unanimous resolution of parliament, strong public support, research-based knowledge of effective solutions, and persistent advocacy by civil society organizations over 30 years. A major missing piece is weak governance for children that results in fragmented support systems, blame games between different levels of government, and weak public accountability.

The new federal Poverty Reduction Strategy is a step forward, but it needs more ambitious targets for children and more robust monitoring and reporting on components relating to children. One illustration of the failure to consider children's rights and the lack of coordination is evidence that Canada Revenue Agency rules exclude some children from eligibility for the Canada Child Benefit, which is billed as a universal program. At the present time this is under review by the federal taxpayers' ombudsman.²¹

7.A.1. Response to previous recommendations that would benefit Canada

Previous recommendations called on Canada to set "annual targets to reduce child poverty," a strategy that has been effective in other countries. Short-term targets have also been effective for other objectives in Canada.

A second recommendation was an assessment of the impact of tax benefits and social transfers to ensure they give priority to children in the most vulnerable and disadvantaged situations. The official report lacks any attempt to assess the collective impact of resource allocation for children and vulnerable children. In addition, there is pressure from some provinces to transfer more tax-funded resources with no accountability for their use.

A third recommendation asked Canada to ensure adequacy, equitable access, and comparable quality in services for Indigenous, African-Canadian, and other minority children, including social assistance and child welfare services. Separate reports will provide details from each community. In general, the National Poverty Strategy lacks a strong focus on support services for children, in

spite of evidence that a combination of household income support and community services is most effective for reducing child poverty.

If Canada had taken previous recommendations in each of the previous reviews seriously, Canada would have made more progress in reducing child poverty.

7.A.2. Questions for Canada to Answer

- Why does Canada refuse to set short-term targets to reduce child poverty, given the success of other countries who use this approach?
- Why do national and sub-national governments refuse to be transparent and use public accountability to ensure that children are given priority in the use of public resources through social transfers and tax policies?
- Why does Canada continue to resist court judgments and academic research evidence that documents inequitable community support services for children and the long-term negative impacts for developing the potential of children?

7.A.3. Recommendations

The CCRC recommends that Canada:

- Establish ambitious annual targets to reduce child poverty, with strategies to achieve them and public monitoring and reporting on outcomes;
- Assess transfers and tax benefits to give priority to children in vulnerable contexts, and;
- Ensure equitable funding and access to quality services for vulnerable groups.

7.B. Food Security

The CCRC continues to advocate for a strong focus on children in the developing National Food Policy, and supported proposed legislation to regulate the advertising of unhealthy foods to children. It was deliberately stalled in the Senate just before the last election. Reintroduction of the legislation is in the mandate letters for the Ministers of Health and Agriculture after the election. Such legislation was a specific recommendation in the last review of children's rights. Issues related to the right to food are also addressed in a separate report.

7.B.1. Recommendations

1. Give a high priority to reintroduction and passage of the legislation to regulate the advertising of non-nutritious food to children, and;
2. Give a high priority to the food and nutrition needs of children in the National Food Strategy.

7.C. Social Determinants of Health and Health Policy in Canada

Implementation of the Convention's strong focus on creating healthy conditions for children would be an asset for health policy, which is dominated by clinical care approaches and fragmented between various government departments and agencies. There is well-documented research on existing gaps and the benefits of providing more resources to preventive health care for children, as noted in a CCRC Fact Sheet.²² It identified three areas for action: a more holistic approach to children's health policy; equity analysis to ensure access to services for vulnerable groups, and consideration of the views of children in health policy.

Following the 2019 election, the Prime Minister mandated several cabinet ministers to develop a well-being measure to replace the reliance on the GDP as a measure of economic success in Canada, for use in budget planning. The CCRC welcomes this as an opportunity to make progress toward greater consideration of the social determinants for children's health and well-being in the decision-making and budgeting processes in Canada.

7.C.1. Recommendations

Based on existing research, the CCRC recommends that Canada:

1. Shift from narrow, discreet interventions to treat children as whole persons in formulating health policy and programming for children;
2. Allocate resources for preventive measures based on the research findings in the field of the social determinants of health for children;
3. Establish a mechanism to investigate and address evidence of inequitable access to health care for vulnerable groups, as recommended in previous reviews, and;
4. Give high priority to children's well-being in the development of a new well-being index for measuring progress in Canada, consult with those who have done significant research and development in this field to develop a robust approach, and use rights-based tools to help coordinate multiple actors and provide transparency and accountability.

7.D. Youth and Homelessness

The second review of children's rights in 2003 asked Canada to: identify the causes of youth homelessness; strengthen support services for street youth; pay attention to vulnerable groups; and take measures to reduce and prevent its occurrence. Canada did not respond in the 3/4th report, in spite of advocacy to do so. Meanwhile, rates of youth homelessness and the costs of the crisis response have increased. Waiting too long to do anything is identified as a major problem in Canada.²³

A new National Housing Strategy, adopted in 2019, recognizes the right to housing and includes several rights-based measures. For young people, new calls for comprehensive and coordinated prevention strategies converge with calls to take the implementation of children's rights more seriously in Canada. This issue will be addressed in a separate report by experts in the field of youth homelessness.

7.E. Healthy Environment and Children's Rights

Young people in Canada are joining global campaigns for the right to grow up in a healthy environment. The CCRC intervened in two provincial court cases on climate change to inform the court about the impacts for children's right to a healthy environment.²⁴ Appeals will be heard at the Supreme Court of Canada in March. The CCRC was unsuccessful in its advocacy to have the rights and views of young people be given special consideration in a new environmental review process.²⁵

7.E.1. Recommendations

1. That Canada incorporate children's right to a healthy environment into the Environmental Protection Act, including focused consideration of greater impacts for children and the views of young people, in keeping with General Comment #15 on the Right to Health.

7.F. Mental Health

While the 2018 budget allocated additional resources for youth mental health, young people continue to name mental health as a priority for improvement in Canada. Research shows that:

- About 1 in 5 children experience a mental illness
- Suicide is the second leading cause of death among youth
- Only 1/3 of youth access the mental health services they need.²⁶

7.F.1. Response to previous recommendations that would benefit Canada

Canada was asked to strengthen interventions to prevent suicide among children with a focus on early detection. There is a new Federal Framework for Suicide Prevention, but it does not include a specific focus on children.

Canada was asked to expand access to confidential psychological and counselling services in all schools, including social work support at home. Such access is very uneven in Canada and there is no reporting or public accountability that would help to ensure all children have access to such services.

The last review flagged the issue of over-medication as a “quick-fix,” based on evidence from young people. Canada was asked to monitor excessive use of psycho-stimulants, address root causes, improve accuracy of prescriptions and access to behavioral and psychological interventions, and monitor informed consent in relation to the use of drugs on children. An academic research study documents a 36% increase in anti-depressant prescriptions for children from 2012 to 2016.²⁷ It does not investigate root causes or relation to alternatives such as behavioral or cognitive therapy interventions. The official report provides no evidence or analysis to show that this recommendation was taken seriously in 2012.

7.F.2. Questions for Canada to answer

- *What explains the absence of a special focus on children in the Federal Framework for Suicide Prevention, given that suicide is the second leading cause of death among youth in Canada?*
- *Can the provinces provide data on access to counselling services through all schools?*
- *What are the findings of the “work underway” to monitor prescriptions of psycho-stimulants and use of other therapies for children, when did it start, and what are the plans to address root causes?*

7.F.3. Recommendations

The CCRC recommends that national and sub-national governments:

1. Add a specific child-focused section to the federal framework for suicide prevention, including a focus on early detection;
2. Publish data on access to services and mechanisms to help children searching for help;
3. Publicly report on mental health support services in schools and establish a complaint process for children who are denied access to education for mental health issues; and
4. Ensure the right of young people to have their views considered is respected in individual mental health decision-making and in the design of mental health services for young people.

7.G. Children with Disabilities

Progress in realizing the rights of children with disabilities under both the Convention on the Rights of the Child and the Convention on the Rights of Persons with Disabilities will be addressed in a separate report, since Canada is being reviewed under both Conventions at this time.

8. Education, leisure and Cultural Activities Articles 28, 29, 31

8.A. Education Systems and Children's Rights

A 2017 CCRC survey of provincial education curricula showed that no province systematically teaches children about children's rights.²⁸ Where Children's Rights Education (CRE) does occur, there is a lack of monitoring of the quality of instruction, training for teachers in children's rights, and measures to ensure that all teachers and officials in the school are knowledgeable about the meaning of children's rights.²⁹ The fundamental principles of the Convention and the provisions of Articles 28 and 29 are not recognized in most provincial education legislation and policy documents. Many school policies are not rights-based; those who work with children in schools are not trained in children's rights; there is often no system of reporting and accountability for violations of the rights of children, and avenues for children and parents to address concerns about children's rights in education are uneven and inadequate. Some progress is being made on inclusive and equal access to education, but it is uneven (see reports by First Nations, Metis, Inuit, children with disabilities, and racial minority groups).

Violations of children's rights in education include: verbal, physical, and psychological bullying and other forms of violence; discriminatory actions within schools and education systems; failures to respect the dignity of children and their right to be heard in disciplinary policies and procedures; inequitable access to support services, including mental health and confidential counselling; inequitable access to comprehensive sexual education; and failures to prepare students for all aspects of modern life. The lack of data analysis and transparency within school systems affects the education of all children, as reflected in continuing high rates of youth-reported bullying, mental health issues, drop-outs, and youth suicides. Access to comprehensive sexual education will be addressed in a separate report.

Issues relating to children's rights in the education sector are getting more public attention in various provinces. Examples include an Ontario Human Rights Commission investigation into realization of the right of children with reading disabilities to learn to read and a court case in Quebec launched by students from a Hasidic Orthodox Jewish school which alleges that the province did not protect their right to education. Deregulation of home-schooling in Prince Edward Island raised questions in the public media about who protects the rights of children to an adequate education.

8.A.1. Response to previous recommendations that would benefit Canada

Canada did not respond to a recommendation to abolish the need for user fees in compulsory

education. The use of user fees varies widely across Canada, affecting equitable access to education, but it is not publicly monitored, reported or analyzed for its impacts on equity in education.

More analysis on inclusion and equitable treatment is found in the reports from affected groups.

8.A.2. Questions for Canada to Answer

- *Why has Canada made so little progress toward ensuring that all children learn about their rights and how to exercise them? What steps will be taken to fulfill this duty?*
- *Why are child rights not explicitly addressed when violations of the rights of children take place at schools?*
- *Why is no data required from schools about the exact nature of incidents, with monitoring and analysis to inform good practices for prevention of violations of the rights of children in schools?*

8.A.3. Recommendations

The CCRC recommends that:

1. The Council of Ministers of Education do a mapping of how children's rights, as articulated in the Convention, are incorporated into provincial education legislation, curricula, policies, and practices;
2. Provinces and territories make child rights education mandatory for Bachelor of Education/teacher certification programs and provide ongoing training for teachers to use curricula that are fun, relevant (contextualized), and accessible, with a monitoring system designed to ensure all children learn about their rights;
3. Child rights training be provided for all individuals who work with children, including but not limited to: bus drivers, support educators, class aids, kitchen employees, janitors, etc., and;
4. Provinces and territories make it mandatory for schools to document and report the nature of rights violations that take place in their schools, as well as actions taken, in order to foster accountability for protecting the rights of all children.

8.B. Right to Play

In 2019 a CCRC Fact Sheet was distributed to raise awareness about the Right to Play.³⁰ Issues related to the right to play will be addressed in a separate report prepared by the International Play Association of Canada.

8.B.1. Recommendations

1. The CCRC recommends that Canada present an action plan to implement Article 31 across Canada.

9. **Special Protection Measures** **Articles 22, 30, 32, 33, 34, 35, 37, 38, 39, 40**

9.A. First Nations, Metis, and Inuit Children

Separate reports from these groups allow young people and providers of children's services in these communities to have their own voices in this process.

The new legislation on Indigenous child welfare, Bill C-92, explicitly recognizes the Convention and incorporates its core principles into specific provisions. Effective implementation will require careful monitoring.

9.B. Racial Minority Children

Issues relating to different groups will be submitted in separate reports. In general, the previous recommendations to ensure non-discrimination and equitable access to public services have been addressed in some specific initiatives, but not in a comprehensive way and there is not an effective monitoring and reporting system to measure progress.

The mandate for the newly appointed Minister for Diversity, Inclusion, and Youth includes addressing racial discrimination, which may lead to more progress in this area.

9.C. Children in the Refugee System

While the number of asylum-seeking children being held in detention centers has been reduced, it is still too many (or) the practice has regrettably not been eliminated. Detailed analysis of this matter and recommendations will be provided in a separate report.

9.D. Child Labour

In 2016 Canada ratified ILO 138 and it entered into force in June, 2017. The CCRC sent letters to provincial governments about effective implementation, with a focus on informing young people about their rights in the workplace and establishing accessible complaints procedures for young people to address violations of their rights. A CCRC survey showed very uneven rules in provinces.³¹

Canada's report does not include information on how provinces are implementing the educational, monitoring, and reporting provisions of ILO 138. It is inadequate to assume, as Canada's report does, that just because provinces set 16 as the age of compulsory education, that there is adequate protection of the rights of young people in the workplace.

9.D.1. Response to previous recommendations that would benefit Canada

While Canada ratified ILO 138, it has not taken steps to do the following:

Establish a unified mechanism for systematic data collection on incidence of hazardous child labour and working conditions, disaggregated by age, sex, and geographic location as a form of public accountability for protection of the rights of children.

9.D.2. Recommendations

1. The CCRC recommends that Canada, through the Council of Ministers of Labour, establish an effective monitoring system for implementation of ILO 138, including the participation of young people, access to youth-friendly avenues for complaint, and public reports that are accessible to young people.

9.E. Children in the Criminal Justice System

Progress has been made in expanded use of extra-judicial measures and community-based sentencing options. Expanding the use of the two-stage screening process, which is now used in some provinces, would result in more diversion and rehabilitative sentencing. While there are significant restrictions on the use of adult sentences at age 14, eliminating it entirely would help to increase the focus on rehabilitation as the purpose of youth sentencing.

While youth incarceration rates have decreased in general, there has been an increase in the incarceration of Indigenous youth. Indigenous youth, who make up 8% of youth in Canada, represented 46% of incarcerated youth in 2016/17, up from 35% in 2012/13.³² Indigenous youth are over-represented in both custody and community service, making up 50% of youth in custody and 42% of

youth in community service in 2016/17. The trend continued in 2017/18.³³ Disaggregated data is not kept for other racial minority groups.

Limited resources present serious barriers to legal representation for young people and access to community-based programs that better meet the needs of youth with mental health issues, African Canadian/Black youth, and First Nations/Metis/Inuit youth in conflict with the law. Access to both legal representation and alternative measures varies widely across Canada, resulting in inequitable treatment of young people based on location. Expanding the reach of the good initiatives listed in the official report will be necessary to reduce the over-representation issues identified in the last review.

Other barriers for young people include lack of knowledge about their rights, current laws, and how youth court works. More resources for education and prevention programs would also be cost-effective.

Young people who serve their sentences far from home are deprived of important family connections because of the costs of travel for family visits.

9.E.1. Response to previous recommendations that would benefit Canada

Listing some good initiatives falls short of “*an effective action plan toward eliminating the disparity in rates of sentencing and incarceration of Aboriginal and African Canadian youth.*” Training all legal, penitentiary and law enforcement professionals on the Convention is another recommendation that would have significant benefits. Raising the age for adult sentencing, removing deterrence from the purposes of sentencing, and withdrawing the reservation to Article 37a would make Canada’s youth justice system more consistent with the Convention.

9.E.2. Questions for Canada to Answer

- Given the continuing over-representation of Indigenous youth in detention, what steps will be taken to turn listed programs into an effective action plan? Were proposed solutions at the March 2017 Roundtable implemented, and if so, what were the outcomes?

9.E.3. Recommendations

The CCRC recommends that national and sub-national governments:

1. Develop an action plan with specific steps, timelines, and public reporting to address the over-representation of Indigenous and African Canadian youth in the youth criminal justice system.
2. Address the resource shortage for legal representation, access to appropriate, rehabilitative, community-based programs, and the maintenance of family connections for incarcerated youth;
3. Use public mapping of access to services to increase accountability for equitable treatment;
4. Increase education about rights and training about duties under the Convention for professionals in the justice system.

9.F. Access to Justice

Access to justice in Canada is an important aspect of implementation that deserves more attention in this review. The following is a list of issues that warrant more research and response:

- Lack of legal standing: In many jurisdictions and areas of law, children have no legal standing; they need to rely on their guardians to pursue justice. In Ontario, for example, children can be expelled from school without having any opportunity to be heard, because they have no standing or right to appeal in disciplinary processes. This is a serious failure to implement basic principles of the Convention in processes that are critical for realizing a child's full potential.
- Lack of legal representation: Children are only entitled to legal representation in the youth criminal justice system; there is limited, discretionary representation in a few areas, and none in many areas of law that affect children. Access to lawyers is limited and varies greatly, depending on location; there is only one full-service youth-specific legal clinic in Canada. Some court-appointed lawyers speak in court about the child's best interests as the lawyer determines it, but they are not acting on the child's instructions, and, in some cases, they do not even meet with the child.
- Lack of youth-friendly mechanisms to lodge complaints and seek resolution or redress: Children have little access to courts and courts are not the most appropriate avenue for resolution of many complaints. Provincial children's advocates have very restricted mandates and cannot hear complaints in many areas of most relevance for children, such as education. There are no avenues for children to pursue the failure to allow them to be heard and consider their views.
- Lack of youth-friendly ways of being heard: When children's views are heard in Canada, it is usually speaking to an expert who writes a report, through a lawyer who may or may not reflect what the young person said, or sometimes judicial interview.

Access to justice issues in Canada are permeated with confusion between the best interests of the child and views of the child. In some proceedings, if best interests are considered by adults, it is not considered important to hear the child. In other cases, hearing the child is one of many factors used to determine the best interests. The two are not necessarily the same. Greater clarity and distinctions between the two would be of benefit for the realization of children's rights in Canada.

Other issues relating to a variety of decision-making processes are: failure to inform the child of a decision that affects the child, in language the child can understand; lack of preparation to ensure a child is well-informed before a decision-making process that affects them; failure to prepare children for potential outcomes of a process; delays; and physical spaces for hearings that are intimidating or otherwise affect a child's capacity for meaningful participation.

9.F.3. Recommendations

The CCRC recommends that:

1. Justice Canada engage with stakeholders to identify and remove barriers that young people experience in access to justice for infringements and violations of their rights in various areas of law and other decision-making processes that affect their rights.
2. Canada ratify the Optional Protocol to the Convention on the Rights of the Child that establishes a complaints procedure, so children in Canada can also use that mechanism.

¹ The Canadian Coalition for the Rights of Children is a national registered charity in Canada. Board members at the time of report include: Kathy Vandergrift, Consultant, Co-Chair; Kate Butler, Save the Children Canada, Co-chair; Tanja Savilaakso, Plan Canada, secretary; Emily Chan, Justice for Children and Youth, treasurer; Karyn Kennedy, Boost Canada, director; Helesia Luke, First Call BC, director; Hala Mreiwed, PhD Candidate, director; Terence Hamilton, UNICEF Canada, director; Robyn Aaron, graduate student, director; Daniella Bendo, graduate student, director.

² Canadian Coalition for the Rights of Children. *Right in Principle; Right in Practice: Implementation of the Convention on the Rights of the Child in Canada*. Report prepared for 3th/4th review of Canada, published in 2011. Available at: <http://rightsofchildren.ca/wp-content/uploads/2016/01/CCRC-report-on-rights-of-children-in-Canada.pdf>.

³ Canadian Coalition for the Rights of Children. *Ten Steps for Children in Canada*. Available at: <http://rightsofchildren.ca/wp-content/uploads/2016/03/10-Steps-for-Children-in-Canada.pdf>

⁴ Recommendations for Canada from the UN Committee on the Rights of the Child in Youth-friendly Language. Published by UNICEF Canada and the Ontario Office of the Child Advocate, April 2013. Available at: http://rightsofchildren.ca/wp-content/uploads/2016/03/concluding_observations_in_youth_friendly_language_EN.pdf

⁵ Canadian Coalition for the Rights of Children. 25 Years of Implementation: How Are We Doing? Published November 2016. Available at: <http://rightsofchildren.ca/wp-content/uploads/2016/10/CCRC-25th-Anniversary-of-Ratification-Flyer.pdf>

Canadian Coalition for the Rights of Children. Fact Sheets on various issues are available at: <http://rightsofchildren.ca/childrens-rights-under-review/childrens-rights-fact-sheets/> <https://scics.ca/en/product-produit/news-release-federal-provincial-and-territorial-ministers-from-across-the-country-gather-to-discuss-human-rights/>

First Nations Family and Caring Society. "Victory for First Nations Children and Families: Canadian Human Rights Tribunal Orders Compensation, 2019 CHRT 36" Information sheet published Sept. 6, 2019. Available at: https://fncaringsociety.com/sites/default/files/2019_chrt_39_info_sheet_final.pdf

National Enquiry into Murdered and Missing Indigenous Women and Girls. *Reclaiming Power and Place: Final Report*. Available at: <https://www.mmiwg-ffada.ca/final-report/>

News Release: "Standing with First Nations Children" Issued November 21, 2019. Available at: https://7f9b59af-af92-41cd-8e6c-aa2870f170de.filesusr.com/ugd/f54667_7ef740d9a6db47bbfa5538b72bfdffb.pdf

The summary of CSO responses to the proposed outline omits significant content and presents a distorted analysis of CSO views. As an example, Appendix B states that only 3 organizations raised the issue of corporal punishment, ignoring that one is a Coalition and one member of that coalition has over 600 organizations supporting a call to prohibit corporal punishment.

⁶ Canadian Coalition for the Rights of Children. *Closing Gaps: Systemic Change is Essential to Implement Children's*

⁷ News release at conclusion of Federal/Provincial/Territorial Conference on Human Rights, available at:

<https://scics.ca/en/product-produit/news-release-federal-provincial-and-territorial-ministers-from-across-the-country-gather-to-discuss-human-rights/>

⁸ The summary of CSO responses to the proposed outline omits significant content and presents a distorted analysis of CSO views. As an example, Appendix B states that only 3 organizations raised the issue of corporal punishment, ignoring that one is a Coalition and one member of that coalition has over 600 organizations supporting a call to prohibit corporal punishment.

⁹ Canadian Coalition for the Rights of Children. *Closing Gaps: Systemic Change is Essential to Implement Children's Rights in Canada*; Discussion paper for 5th/6th Review. Available at: <http://rightsofchildren.ca/wp-content/uploads/2019/05/CCRC-Working-Paper-on-Systemic-Recommendations.pdf>

¹⁰ Truth and Reconciliation Commission of Canada. Call to Action Number 2, *Calls to Action*. 2015. Available at: http://trc.ca/assets/pdf/Calls_to_Action_English2.pdf

¹¹ Canadian Coalition for the Rights of Children. *Children's Rights and Education: More than a Right to Go to School*; Discussion Paper for 5th/6th Review. October 2017. Available at: <http://rightsofchildren.ca/wp-content/uploads/2017/10/Discussion-Paper-on-Childrens-Rights-and-Education-2017.pdf>

¹² Pepler, Debra, Kayla Hamel, Lisa Wolff, and Kathy Vandergrift. *Violence Against Children in Canada: Time to Act*. Research paper for National Consultation. June, 2019. Available at: <http://rightsofchildren.ca/wp-content/uploads/2019/10/Violence-Against-Children-in-Canada-Time-to-Act.pdf>

¹³ PrevNet, UNICEF, and Canadian Coalition for the Rights of Children. *Finding Our Path toward Childhoods Free From Violence*; Workshop Report. June 17, 2019. Available at: http://rightsofchildren.ca/wp-content/uploads/2019/10/Finding-our-Path-Toward-Childhoods-Free-from-Violence_17-June-Workshop-Summary-Report.pdf

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- ¹⁴ Canadian Coalition for the Rights of Children. *Finding Our Path Toward Childhoods Free from Violence: Recommendations to Strengthen Canada's Roadmap*. June 17, 2019. Available at: <http://rightsofchildren.ca/wp-content/uploads/2019/10/CCRC-Recommendations-for-Canadas-Pathway-to-End-Violence.pdf>
- ¹⁵ Canadian Coalition for the Rights of Children. *The System Need Fixing: Children's Rights and Provincial Child Welfare Systems*. Discussion Paper published November, 2018. Available at: <http://rightsofchildren.ca/wp-content/uploads/2018/11/Child-Welfare-Systems-and-Childrens-Rights-CCRC-Discussion-Paper.pdf>
- ¹⁶ Canadian Association of Social Workers. *Understanding Social Work and Child Welfare: Canadian Survey and Interviews with Child Welfare Experts*. c. 2018. Available at: https://www.casw-acts.ca/sites/default/files/documents/CASW_Child_Welfare_Report_-_2018.pdf
- ¹⁷ Child Care Now. *The Affordable Child Care for All Plan*. Available at: <https://timeforchildcare.ca/the-affordable-child-care-for-all-plan/>
- ¹⁸ Canadian Coalition for the Rights of Children. *Right to Equitable Access in Early Childhood: A Fact Sheet*. Available at: <http://rightsofchildren.ca/wp-content/uploads/2019/12/Fact-Sheet-on-Child-Care.pdf>
- ¹⁹ Campaign 2000. *Setting the Stage for a Poverty Free Canada*. Published January 24, 2020. Available at <https://campaign2000.ca/wp-content/uploads/2020/01/campaign-2000-report-setting-the-stage-for-a-poverty-free-canada-updated-january-24-2020.pdf>
- ²⁰ Campaign 2000. *Setting the Stage for a Poverty Free Canada*. Published January 24, 2020. Available at: <https://campaign2000.ca/wp-content/uploads/2020/01/campaign-2000-report-setting-the-stage-for-a-poverty-free-canada-updated-january-24-2020.pdf>
- ²¹ Income Security Advocacy Center, Campaign 2000, Chinese and Southeast Asian Legal Clinic, and South Asian Legal Clinic. *Every Child Counts: Making sure the Canada Child Benefit is a Benefit for All Children*. September, 2018. Available at: <http://rightsofchildren.ca/wp-content/uploads/2018/10/Every-Child-Counts-Canada-Child-Benefit-for-All-September-2018.pdf>. Press, Jordan. "Federal Taxpayers' Ombudsman Launches Review of Canada Child Benefit," *Globe and Mail*, December 10, 2019. Available at: <https://www.theglobeandmail.com/politics/article-federal-taxpayers-ombudsman-launches-review-of-the-canada-child/>
- ²² Canadian Coalition for the Rights of Children. *Healthy Conditions for Growing Up in Canada: Fact Sheet*. Available at: <http://rightsofchildren.ca/development/healthy-conditions-for-growing-up-in-canada/>
- ²³ Canadian Coalition for the Rights of Children and A Way Home. *Rights and Preventing Youth Homelessness: Fact Sheet*. Available at: <http://rightsofchildren.ca/wp-content/uploads/2019/07/Youth-Homelessness-Fact-Sheet-by-CCRC-and-A-Way-Home.pdf>
- ²⁴ Vandergrift, Kathy. Affidavit for the Saskatchewan Court of Appeal Hearing in the Matter of the Greenhouse Gas Pollution Pricing Act, Bill C-74, Part V. Docket CACV3239. November 28, 2018. Available at: <http://rightsofchildren.ca/wp-content/uploads/2020/02/Affidavit-of-Katherine-Vandergrift-sworn-November-29-2018-with-Exhibits-01593859-Copy.pdf>
- ²⁵ Canadian Coalition for the Rights of Children. *Children's Right to a Healthy Environment: Submission for Bill C69*. Available at: <http://rightsofchildren.ca/wp-content/uploads/2020/02/CCRC-Submission-on-Environmental-Review-Agency-Bill-C-69.pdf>
- ²⁶ Canadian Coalition for the Rights of Children. *Mental Health and Children's Rights: A Fact Sheet*. Available at: <http://rightsofchildren.ca/wp-content/uploads/2019/08/Mental-Health-and-Childrens-Rights-Fact-Sheet.pdf>
- ²⁷ Aysha Lukmanji, BA&Sc, Tamara Pringsheim, MD, Andrew G. Bulloch, PhD, David G. Stewart, MA, Parco Chan, MSc, Ali Tehrani, BA, and Scott B. Patten, MD, PhD. *Antidepressant Prescriptions, Including Tricyclics, Continue to Increase in Canadian Children*. *Journal of Child and Adolescent Psychopharmacology*, Volume XX, Number XX, 2019, pp. 1-8.
- ²⁸ Canadian Coalition for the Rights of Children.
- ²⁹ Jerome, L., Emerson, L., Lundy, L. & Orr, K. (2015). *Teaching and learning about child rights: a study of implementation in 16 countries*.
- ³⁰ Canadian Coalition for the Rights of Children. *Right to Play: A Fundamental Necessity for Healthy Child Development*. Fact Sheet. Available at: <http://rightsofchildren.ca/wp-content/uploads/2019/12/Right-to-Play-Factsheet.pdf>

³¹ Canadian Coalition for the Rights of Children. *Freedom from Exploitation in the Workplace: How Are We Doing?* Available at: <http://rightsofchildren.ca/wp-content/uploads/2017/03/Workplace-Rights.pdf>.

³² Statistics Canada. Adult and Youth Corrections Statistics 2016-17. Available at: <https://www150.statcan.gc.ca/n1/daily-quotidien/180619/dq180619a-eng.htm>.

³³ Statistics Canada. Adult and Youth Corrections Statistics 2017/18. Available at: <https://www150.statcan.gc.ca/n1/daily-quotidien/190509/dq190509c-eng.htm>.

APPENDIX A

1.A. Response to Previous Recommendations

1. Given the repeated failures to respond to previous recommendations, the CCRC recommends that Canada be asked to file an action plan within one year of receiving the Concluding Observations from this review. The action plan should include what steps will be taken on accepted recommendations and the reasons for rejecting other recommendations.

1.B.1. Legal Measures

The CCRC recommends that Canada:

1. Introduce and adopt legislation on implementation of the Convention at the national level, with a timetable of ten years to bring existing legislation into compliance.
2. Use Children's Rights Impact Assessments (CRIAs) for all proposed laws and programs that affect children, to ensure consistency with the Convention, starting at the national level.
3. Pursue agreement between national and sub-national governments to use CRIAs for all legislative and program changes that have a significant impact for children 0-18 in their jurisdictions.

1.B.2 Coordination

The CCRC recommends the following structural reforms for effective implementation:

1. Senior level coordination between federal departments through an inter-departmental body that provides direct input into decision-making by cabinet committees, with input from young people, civil society, and Indigenous peoples through a children's commission rooted in the Convention.
2. Establishment of a senior level federal/provincial/territorial/first nations coordination mechanism to be responsible for coordinating implementation between jurisdictions and public reporting, with delegated decision-making authority, annual ministerial level meetings, and input from a children's commission rooted in the Convention. Co-ordination would respect a nation-to-nation relationship between the federal government and first nations, while holding all duty-bearers accountable under the Convention.
3. Child-friendly complaints mechanisms at federal/provincial/first-nations levels, based on recognition of the Convention in Canadian law as the guide for implementing the Charter of Rights and Freedoms for children.
4. Ratification of the Third Optional Protocol to the Convention so children in Canada can also use the complaint procedure established under the Convention.

1.C. Allocation of Resources/Budgeting

Recommendations:

1. That the Parliamentary Budget Office be asked to include a mechanism to report and track expenditures for children in its regular budget analysis.

2. That the Auditor General be asked to do an assessment of the equitable impact of resources allocated for children, including resources transferred to provinces through revenue-sharing agreements in the areas of health, economic development, and social policy.

1.D. Data Collection and Analysis

Recommendation:

1. Given the slow progress within the government and available expertise in civil society, the CCRC recommends that Canada convene a group of experts to develop a data base that would meet the criteria named in the Concluding Observations from the 3rd/4th review. Public reporting, including the gaps in data from some provinces (the reason given by federal officials for poor data collection and analysis), would allow parents, children, and civil society organizations to hold all levels of government accountable for implementing children's rights.

1.E. Independent Monitoring

The CCRC recommends that:

1. Provincial legislation on children's rights include provisions for implementation throughout relevant departments, including the performance criteria of senior department officials, as well as through the offices of children's advocates.
2. That the mandates of provincial children's advocates be broad enough to cover all complaints about infringements, violations, and systemic issues such as resource allocations for children.
3. That regular evaluations be done to inform good practices within such offices, especially in areas such as participatory rights, youth-friendly avenues for redress, and systemic outcomes.
4. That a National Commission for Children be established to address gaps and inequities between jurisdictions and a National Commissioner to monitor accountability within federal jurisdiction.

1.F. Awareness of Rights and Dissemination of Reports

Recommendations:

1. That every province in Canada be asked to table a plan for teaching children about children's rights, including integration into required curricula before the next review.
2. That the federal government work with civil society to develop and maintain a website that includes child-friendly resources to learn about children's rights and how children can exercise them, and a site for information-sharing among young people and civil society organizations who support children in the exercise of their rights. This website could also make reports, concluding observations after reviews, and alternative reports by civil society groups easily accessible for everyone interested in the implementation of children's rights in Canada.

3.A. Non-discrimination

Recommendation:

1. Given the government's position that the current system provides equal access to services and continuing evidence by civil society groups of inequitable access, the CCRC recommends that Canada establish a child-friendly complaint mechanism with the authority to investigate and order remedies as appropriate.

3.B. Best Interest of the Child

Recommendation:

1. Given the very limited progress in application of this principle in Canada, the CCRC recommends that Canada convene a multi-stakeholder, multi-disciplinary conference, drawing on the conference sponsored by the CCRC in 2009, to develop a strategy for universal application of the best interests of the child principle by the time of the next review.

3.C. Respect for Views of the Child

The CCRC recommends that:

1. A robust evaluation be done to inform the expanding use of youth advisory groups within governing bodies as one means for implementing Article 12. The results should be made public and used to inform good practices to realize Article 12 rights.
2. Canada lead a program of legal review and reform to fully implement Article 12 through all means, for all children, in all areas of law that affect children's lives.
3. National and sub-national governments each establish child and youth-friendly mechanisms within their areas of jurisdiction for hearing and resolving appeals when children's rights to have their views considered are not upheld.
4. A national capacity-building program be developed and implemented to include parent education, informing children how to exercise their rights, and training professionals to exercise their duties to meaningfully listen and act upon the views of children when appropriate.

5.A. Ending All Forms of Violence against Children

The CCRC recommends that Canada strengthen the Roadmap by:

1. Establishing a legal framework that clearly reflects Article 19, including repeal of section 43 of the Criminal Code which legitimates corporal punishment.
2. Developing and implementing an effective monitoring and reporting system for violence against children, under national leadership, including annual reports that map data about violence, access to programs, and outcome data to show progress over time.
3. Establishing a focal point for on-going coordination and collaboration between government agencies and civil society organizations to be more effective in prevention efforts.

5.B. Corporal Punishment

Recommendation:

1. The CCRC recommends that Canada introduce legislation to explicitly prevent all forms of violence against children, including repeal of section 43, and implement a national public

education strategy based on research about the impacts of corporal punishment and other forms of violence, parenting alternatives, and the Truth and Reconciliation Commission.

6.A. Child Welfare

The CCRC recommends that:

1. Federal, provincial and territorial governments use a rights-based framework to produce annual reports on children in care, in order to fulfill the TRC's Call to Action and to be accountable for the rights and well-being of the children in their care;
2. All provinces review and revise child welfare legislation to include relevant provisions of the Convention, drawing on the relevant General Comments for good practices.

6.B. Early Childhood Development and Care

The CCRC recommends that Canada:

1. Explicitly recognize children's rights in the current multi-lateral framework and strengthen it by acting on the steps outlined in the Affordable Child Care for All Plan;
2. Use rights-based tools for planning, evaluation, and reporting to ensure accountability, and;
3. Embed children's rights in early learning programs, learning plans, programs for parents, and training of workers.

7.A. Child Poverty

The CCRC recommends that Canada:

1. Establish ambitious annual targets to reduce child poverty, with strategies to achieve them and public monitoring and reporting on outcomes;
2. Assess transfers and tax benefits to give priority to children in vulnerable contexts, and;
3. Ensure equitable funding and access to quality services for vulnerable groups.

7.B. Food Security

The CCRC recommends that Canada:

1. Give a high priority to reintroduction and passage of the legislation to regulate the advertising of non-nutritious food to children, and;
2. Give a high priority to the food and nutrition needs of children in the National Food Strategy.

7.C. Social Determinants of Health and Health Policy in Canada

Based on existing research, the CCRC recommends that Canada:

1. Shift from narrow, discreet interventions to treat children as whole persons in formulating health policy and programming for children;
2. Allocate resources for preventive measures based on the research findings in the field of the social determinants of health for children;
3. Establish a mechanism to investigate and address evidence of inequitable access to health care for vulnerable groups, as recommended in previous reviews, and;
4. Give high priority to children's well-being in the development of a new well-being index for measuring progress in Canada, consult with those who have done significant research and

development in this field to develop a robust approach, and use rights-based tools to help coordinate multiple actors and provide transparency and accountability.

7.E. Healthy Environment and Children's Rights

Recommendation

1. That Canada incorporate children's right to a healthy environment into the Environmental Protection Act, including focused consideration of greater impacts for children and the views of young people, in keeping with General Comment #15 on the Right to Health.

7.F. Mental Health

The CCRC recommends that national and sub-national governments:

1. Add a specific child-focused section to the federal framework for suicide prevention, including a focus on early detection;
2. Publish data on access to services and mechanisms to help children searching for help;
3. Publicly report on mental health support services in schools and establish a complaint process for children who are denied access to education for mental health issues; and
4. Ensure the right of young people to have their views considered is respected in individual mental health decision-making and in the design of mental health services for young people.

8.A. Education Systems and Children's Rights

The CCRC recommends that:

1. The Council of Ministers of Education do a mapping of how children's rights, as articulated in the Convention, are incorporated into provincial education legislation, curricula, policies, and practices;
2. Provinces and territories make child rights education mandatory for Bachelor of Education/teacher certification programs and provide ongoing training for teachers to use curricula that are fun, relevant (contextualized), and accessible, with a monitoring system designed to ensure all children learn about their rights;
3. Child rights training be provided for all individuals who work with children, including but not limited to: bus drivers, support educators, class aids, kitchen employees, janitors, etc., and;
4. Provinces and territories make it mandatory for schools to document and report the nature of rights violations that take place in their schools, as well as actions taken, in order to foster accountability for protecting the rights of all children.

8.B. Right to Play

Recommendation:

1. The CCRC recommends that Canada present an action plan to implement Article 31 across Canada.

9.D. Child Labour

Recommendation:

1. The CCRC recommends that Canada, through the Council of Ministers of Labour, establish an effective monitoring system for implementation of ILO 138, including the participation of young people, access to youth-friendly avenues for complaint, and public reports that are accessible to young people.

9.E. Children in the Criminal Justice System

The CCRC recommends that national and sub-national governments:

1. Develop an action plan with specific steps, timelines, and public reporting to address the over-representation of Indigenous and African Canadian youth in the youth criminal justice system.
2. Address the resource shortage for legal representation, access to appropriate, rehabilitative, community-based programs, and the maintenance of family connections for incarcerated youth;
3. Use public mapping of access to services to increase accountability for equitable treatment;
4. Increase education about rights and training about duties under the Convention for professionals in the justice system.

9.F. Access to Justice

The CCRC recommends that:

1. Justice Canada engage with stakeholders to identify and remove barriers that young people experience in access to justice for infringements and violations of their rights in various areas of law and other decision-making processes that affect their rights.
2. Canada ratify the Optional Protocol to the Convention on the Rights of the Child that establishes a complaints procedure, so children in Canada can also use that mechanism.

APPENDIX B

Canada and Article 12: Limitations and Inconsistencies of Implementation

Canada's report to the United Nations Committee on the Rights of the Child ('the Committee') for the 5th/6th periodic review presents evidence of some meaningful progress towards a culture of respect for the views of the child. Drawing on Article 12 of the United Nations Convention on the Rights of the Child (UNCRC), amendments to the *Divorce Act* adopted in 2019 introduced the requirement for judges to consider the child's views as a criterion for determining their best interests in matters of family law.¹ The report also provides examples of several national and provincial youth councils and advisory groups, engaged in consultations on a range of issues and topics. However, while significant, the amendments to the *Divorce Act* apply only to a specific area of a child's life, and will not affect all children. Moreover, youth councils are but one among many important measures of implementation of Article 12, and have some inherent limitations as a participatory mechanism. In response to Canada's official submission, this report will provide an overview of these limitations, and discuss three key areas of implementation where protection of children's rights to participate in decision-making is inconsistent or insufficient.

1. Limitations of Youth Councils

The full text of Article 12, alongside the Committee's General Comment No. 12 on implementation of this provision, sets out specific obligations for the duty bearer (the state) and entitlements for the rights-holder (the child). Article 12 states that:

Article 12

1. States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child.

2. For this purpose, the child shall in particular be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly, or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law.²

The capacity of youth councils and advisory groups to fulfill these obligations and provide for these entitlements are hindered by three main barriers.

Representation

¹ Bill C-78, *An Act to Amend the Divorce Act, the Family Orders and Agreements Enforcement Assistance Act and the Garnishment, Attachment and Pension Diversion Act and to Make Consequential Amendments to Another Act*, 1st Sess, 42nd Parl.

² United Nations, "Convention on the Rights of the Child" (1989) Treaty Series. UN General Assembly.

The degree to which council members can be representative of a wide group of children and young people is limited. As demonstrated in Canada's official report, children under 12 are rarely included in these initiatives. The right to express one's views is contingent only on the child's ability to form a view, of which even very young children have been shown to be capable. The issue of self-selection presents another difficulty; there is evidence to show that youth who join councils may be less likely to challenge the views of the adults "in charge," and that recruitment of marginalized and hard-to-reach youth can be extremely difficult.³ In a recent study of local youth councils in Canada, one member reported that:

"The council was representative of youth who want to get involved, not all youth. There is, in my opinion, a large part of the population that isn't interested at all in these kinds of committees and so this part of the population isn't represented." – Youth Council Member⁴

The issue of representation is especially problematic given that younger children and children and young people facing social exclusion are more vulnerable to violations of their rights. The absence of their perspectives in decision-making processes should be considered a substantial barrier to the implementation of Article 12.

Role of Adults

The structure of youth councils and advisory groups vary in terms of the agency afforded to young people involved. Even when activities are carried out as a partnership between adults and young people, the structures within which they operate are usually adult-controlled; this may include funding, recruitment, access to decision-makers, and the actual decision-making process itself. This reality is not necessarily at odds with Article 12 and the UNCRC. However, dominant traditional views of the relationship between children and adults, as well as common assumptions about the relative capacities of young people, can impose an unequal power dynamic that limits the extent to which children and young people are freely expressing their views.⁵ There is substantial evidence to show that even well-intentioned adults often have difficulty relinquishing power to young people in these circumstances.⁶ This may result in undue restrictions on the ways in which youth council members express themselves, the issues about which they share their views, and the weight given to their views in decision-making.

Transparency & Feedback

³ Christopher D. O'Connor, "Engaging Young People? The Experiences, Challenges, and Successes of Canadian Youth Advisory Councils," *Sociological Studies of Children and Youth*, no. 16(2013): 73-96.

⁴ Samara Canada, *Engaging Youth Between Elections: A Report on Local Youth Councils* (2016): 4

⁵ Laura Lundy, "'Voice' Is Not Enough: Conceptualising Article 12 of the United Nations Convention on the Rights of the Child," *British Educational Research Journal* 33, no. 6 (2007): 927-42.

⁶ Mary Elizabeth Collins, Astraea Augsburg, and Whitney Gecker, "Youth Councils in Municipal Government: Examination of Activities, Impact and Barriers," *Children and Youth Services Review* 65 (2016): 140-47.

Finally, even if members of a youth council are supported to share their views openly with adult decision-makers, there is often a lack of transparency around how that input is factored in, what the final outcome is, and how this outcome was determined.⁷ This feedback is essential for showing young people that their contributions were taken seriously, but - due in part to member turnover - is often not provided to youth councils in any systematic way. The lack of feedback can suggest to youth that their participation was tokenistic, which has been shown to be a barrier to continued participation in such initiatives.⁸ As such, fast, complete, and accessible feedback is strongly recommended in guidance on rights-respecting collective participation, such as the resource guide on General Comment No. 12 by Gerison Lansdown⁹. These types of resources are numerous, and can help professionals and decision-makers build effective youth councils that empower young people to exercise their rights, build their skills, and share their views in matters that affect their lives. However, the realities of limited time, resources, and expertise mean that these challenges will inevitably face youth councils and advisory groups to some degree. On their own, these initiatives are not sufficient measures for full implementation of Article 12.

2. Deficiencies in Implementation

Under the UNCRC, the Canadian government is obligated to introduce legislative, procedural, and administrative measures to ensure respect for the views of *all* children, in *all matters that affect their lives*. In addition to the spheres of family life, education, and healthcare, this applies to any judicial or administrative proceedings in which the child is involved – including decisions regarding divorce/custody, alternative care, adoption, and contact with the justice system as offenders, victims, or witnesses. There is no federal law requiring children's participation in all official decisions. As many of the processes above fall under provincial or territorial jurisdiction, the extent to which children in Canada have a say in decisions that affect their lives (ranging from school dress codes to allowing contact with birth parents) often depends on where they happen to live. A formal commitment from the Canadian government to respect for the views of the child could significantly improve deficiencies in three key areas of implementation.

Creating a conducive environment and culture of respect for children's views

The relative novelty of children's participation rights necessitates cultural shifts in practices and attitudes, supported by a legal mandate. In the context of families, parent education programs have been found to help parents and guardians better understand their children's rights, their own rights and responsibilities as primary caregivers, and how to support their children in sharing their views. While these programs have found success elsewhere, in Canada they are few in number, mostly target specific issues or groups, and

⁷ Laura Lundy, "In Defence of Tokenism? Implementing Children's Right to Participate in Collective Decision-Making," *Childhood* 25, no. 3 (2018): 340-54.

⁸ O'Connor, "Engaging Young People? The Experiences, Challenges, and Successes of Canadian Youth Advisory Councils."

⁹ Gerison Lansdown, "Every Child's Right to Be Heard," *Save the Children*, no. 12 (2011): 180, http://www.unicef.org/files/Every_Childs_Right_to_be_Heard.pdf.

have not often benefitted from long-term funding or formal evaluations.¹⁰ In addition to learning about their rights at home, children should be made aware of their rights to express themselves and be listened to at school. However, Annex 3 to Canada's official report indicates that Canadian children are mostly not aware of their rights under the UNCRC. While it is imperative for children to understand their rights in order to exercise them, successful implementation of Article 12 also requires that adult professionals and decision-makers are adequately trained and educated. This includes lawyers, judges, policy makers, social workers, prison officers, education and healthcare professionals, immigration officers. To this end, the state must support professional bodies and civil society organizations in building the capacities of professionals to facilitate and listen to children's views.

Legally requiring consideration of children's views in all official decisions

In Canada, a child's legal entitlement to have their views heard in judicial or administrative proceedings varies by jurisdiction, as well as in different areas of law. For example, a child in Ontario has no legal standing to appeal a decision regarding their suspension or expulsion from school; only parents or guardians can file such an appeal.¹¹ In child protection cases, however, children in Ontario must be given every opportunity to share their views before a decision is made.¹² In child protection proceedings in Manitoba only children over the age of 12 are fully entitled to share their views; those younger than 12 are only given the opportunity in limited circumstances at the judge's discretion.¹³ The age at which children must give consent to their adoption varies by jurisdiction; the age of consent is 12 in most regions, and as young as seven in one province.¹⁴ The extent to which children can have a say in adoption plans, such as contact with birth parents, also varies by age in different provinces and territories.¹⁵ In Prince Edward Island, a child is entitled to have their views heard in adoption proceedings "where it is practical to do so," whereas in the Yukon they have only "the right to be present."¹⁶ Children's entitlements in legislation governing consent to medical treatment is also dependent on where they live. In some provinces and territories, children over 16 are presumed capable of consent, while children under 16 are presumed incapable and may only consent if capacity is established. In other jurisdictions, legislation regulating consent to treatment makes no mention of age.¹⁷

Establishing effective mechanisms to facilitate children's participation

¹⁰ Katherine Covell, R Brian Howe & J C Blokhuis, *The Challenge of Children's Rights for Canada, 2nd edition* (2018).

¹¹ Covell, Howe, and Blokhuis.

¹² Bill 57, *An Act to Enshrine Katelynn's Principle as the Guiding Principle for Decisions Regarding Children*, 2nd Sess, 41st Leg, Ontario, 2016.

¹³ *The Child and Family Services Act*, CCSM 1985, c. C-80.

¹⁴ Nicholas Bala and Claire Houston, "Article 12 of the Convention on the Rights of the Child and Children's Participatory Rights in Canada," (2015) <https://www.justice.gc.ca/eng/rp-pr/other-autre/article12/p3a.html>

¹⁵ Covell, Howe, and Blokhuis, *The Challenge of Children's Rights for Canada, 2nd Edition*.

¹⁶ Bala and Houston, "Article 12 of the Convention on the Rights of the Child and Children's Participatory Rights in Canada," 48,51.

¹⁷ Bala and Houston, "Article 12 of the Convention on the Rights of the Child and Children's Participatory Rights in Canada."

In addition to a culture of respect for children's views and a legal mandate to take those views into account, implementation of Article 12 requires systematic mechanisms to ensure consistent and comprehensive protection of this right. In Canada, availability of and access to these mechanisms also fluctuate across jurisdictions and levels of government. In the context of education, child participation may take the form of student councils, representation on boards and committees, student surveys, and procedures for participation in disciplinary decisions. Education is provincially regulated, and these matters are often left to the discretion of individual school boards; as such, there is wide variation in these structures across the country, where they exist at all.¹⁸ In legal proceedings, children require a range of supports in order to have their views heard and considered in decision-making. Access to a representative is a critical element of this, but publicly-funded lawyers are only available to children in certain provinces.¹⁹ In adoption and child protection proceedings, some jurisdictions have minimum age limits for entitlement to counselling or legal advice. There have been positive legal reforms in recent years towards improved supports for children providing testimony in legal proceedings, such as screens and video-recorded testimonies. In practice, the use of these mechanisms has been inconsistent in different provinces and territories, and there is evidence to suggest that in some jurisdictions children's views expressed through these means are more often discredited.²⁰

3. Going Forward

The Committee has explicitly stated that Canada's federation should not be considered justification for the unequal treatment of children.²¹ Nonetheless, the extent to which children across Canada are entitled and supported to be heard in official decision-making is drastically inconsistent. Canada's official report primarily cites youth councils as evidence of respect for the views of the child, but members of Canadian youth councils themselves have stressed that even when these activities are well-executed, they are not enough to ensure children and young people's voices are meaningfully considered in all decision making.²² The Canadian government should heed the recommendations put forth by the Committee and the Canadian Coalition on the Rights of the Child, echoed by

¹⁸ Covell, Howe, and Blokhuis, *The Challenge of Children's Rights for Canada, 2nd Edition*.

¹⁹ Donna J Martinson, "Children's Legal Rights in Canada under the United Nations Convention on the Rights of the Child" (Toronto, 2016).

http://www.cba.org/CBAMediaLibrary/cba_na/PDFs/PublicationsAndResources/Toolkits/ChildRights/LegalRightsUnderUNCConvention_Martinson.pdf

²⁰ Covell, Howe, and Blokhuis, *The Challenge of Children's Rights for Canada, 2nd Edition*.

²¹ United Nations Committee on the Rights of the Child, "Concluding Observations on the Combined Third and Fourth Periodic Report of Canada, Adopted by the Committee at Its Sixty-First Session (17 September - 5 October 2012)"

²² O'Connor, "Engaging Young People? The Experiences, Challenges, and Successes of Canadian Youth Advisory Councils."

Canadian young people, to establish formal mechanisms to ensure respect for the views of every child in Canada.