



## Special Report

# Aboriginal Children Canada Must Do Better: Today and Tomorrow

Submitted to: UN Committee on the Rights of the Child  
By: Canadian Council of Child and Youth Advocates

2011



*Members of the*

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## 1. Introduction

The Canadian Council of Child and Youth Advocates (the Council)<sup>1</sup> submits this Special Report to the UN Committee on the Rights of the Child (Committee) to highlight the critical circumstances facing Aboriginal<sup>2</sup> children<sup>3</sup> today. The Council is a national alliance of child advocates legally appointed by the Canadian provinces and territories. The Council members' mandates include promoting and protecting children's human rights, including the rights of Aboriginal children. In our role as advocates for Aboriginal children, and through their voices, we have identified critical systemic challenges impacting Aboriginal children's lives and requiring urgent attention. This awareness has led us to contribute to the Committee's review of Canada's 2009 report<sup>4</sup> by submitting this Special Report. We ask the Committee to consider our report, including our recommendations directed at improving the lives of these, and all, children.

By focusing on Aboriginal children, we draw attention to the intertwining of circumstances affecting many vulnerable children within our jurisdictions. These vulnerable children include children with disabilities; trafficked and sexually exploited children; children requiring protection; homeless children; children in the justice system; and children whose families live in poverty. Refugee, unaccompanied and separated children also intersect with these groups. It is our belief that by highlighting factors relevant to Aboriginal children, we also emphasize what is pertinent to all groups of children. It is our belief that by promoting the realization of Aboriginal children's human rights, we promote the realization of human rights for all children.

In its past Concluding Observations to Canada, the Committee has expressed their concerns and made specific recommendations about Aboriginal children, who remain among the most vulnerable children in Canada today. Canada has made some progress towards improving the lives of some children. It is our contention, however, that the Committee's past recommendations remain largely unaddressed to the fullest extent possible and that a high percentage of Aboriginal children fail to realize their rights under the UN Convention on the Rights of the Child (CRC), the UN Declaration on the Rights of Indigenous Peoples and other human rights instruments.

In 2010, we released a position paper<sup>5</sup> highlighting significant issues affecting Aboriginal children, making recommendations and calling upon Canada for an immediate response. Our position paper informs this Special Report, which we believe offers a more realistic and contemporary picture of

<sup>1</sup> The Council's work with and for vulnerable children, such as Aboriginal children, informs our understanding about significant child-related issues. There are child advocate offices in Alberta, British Columbia, Manitoba, New Brunswick, Newfoundland and Labrador, Ontario, Yukon and Saskatchewan as well as Youth Ombudsman in the Nova Scotia Office of the Ombudsman and the Québec Commission des droits de la personne et des droits de la jeunesse. While the legislated mandates vary, the offices are united in their advocacy work for children

<sup>2</sup> For purposes of this paper 'Aboriginal' includes First Nations, Métis and Inuit children and youth living in all provinces and territories in Canada. 'Aboriginal children' is used in place of indigenous children' because the Constitution of Canada refers to the Aboriginal peoples of Canada.

<sup>3</sup> For brevity's sake, 'children' includes children and youth under 18 years of age.

<sup>4</sup> See: Third and Fourth Reports of Canada on the *Convention on the Rights of the Child*, Covering the Period January 1998 - December 2007.

<sup>5</sup> Available at: [www.rcybc.ca](http://www.rcybc.ca)

Aboriginal children's lives than what Canada has reported. Our analysis reveals a crisis in Aboriginal children's lives that must be addressed. To bring attention to Aboriginal children and encourage what is required to fulfill Canada's CRC obligations, this Special Report refers to the Committee's earlier observations, its recommendations to Canada and the Committees' General Comments where applicable. We also mention Canada's 2009 report, when relevant, and offer information along with recommendations that we believe will assist the Committee in its review of CRC implementation in Canada.

The Committee, Canada and the Council agree that Aboriginal children face gross inequities and lack opportunities to realize fully their CRC rights. We appreciate the Committee's guidance to Canada (and other States) on indigenous children's CRC specific entitlements, which are '...indicative of the recognition that [indigenous children] require **special measures** [author emphasis] in order to fully enjoy their rights.'<sup>6</sup> By submitting this Special Report, we ask the Committee to encourage Canada to develop and implement special measures that will assist Aboriginal children, and all children, with the fulfillment of their human rights under the CRC and other related human rights instruments.

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<sup>6</sup> See: UN Committee Special Comment 11. Available at: <http://www2.ohchr.org/english/bodies/crc/comments.htm>

## 2. Context

Canada's obligation to implement the human rights of Aboriginal children, as the Committee has indicated, are reflected in numerous human rights treaties and international initiatives that Canada has ratified or endorsed. In 2004, the UN Special Rapporteur on the human rights situation and fundamental freedoms of indigenous peoples reported, however, that Canada needed to improve its implementation of indigenous human rights, making several recommendations.<sup>7</sup> While the CRC, in particular, has been used to raise awareness about the inequality and violations of Aboriginal children's rights within Canada, we agree with the Special Rapporteur and other child rights advocates that the CRC has not been sufficiently implemented since Canada's ratification and, regrettably, the goal of addressing the rights of Aboriginal children and their persistent disadvantages remains largely unrealized.

In its 2003 Concluding Observations to Canada, the Committee expressed concern that Aboriginal children in Canada continued to experience problems, including discrimination in several areas, with much greater frequency and severity than their non-Aboriginal peers (para 58). The Committee urged '...the Government to pursue its efforts to address the gap in life chances between Aboriginal and non-Aboriginal children' and referred to the Royal Commission on Aboriginal Peoples' recommendations, encouraging the '...State party to ensure appropriate follow-up' (para 59).

Canada referred to Aboriginal child initiatives in its 2009 report, noting that '[h]igh rates of poverty, single-family households, health issues, as well as a lack of social supports, create a gap in life chances between Aboriginal and non-Aboriginal children' (para. 61). Canada's report also referred to strategic funding for programs and projects that targeted public health priorities. The 'issues addressed through projects funded between 2004 and 2007 include food security, family violence, fathering, attachment, prevention of teen pregnancy, breastfeeding and rural health' (para 61). The report, we note, did not extend beyond program descriptions to program evaluations indicating outcomes for Aboriginal children for whom those initiatives were intended to benefit.

And yet, despite initiatives, programs and projects, Canada's attempts have not been effective at improving Aboriginal children's lives and these children continue to bear the impacts of a 'legacy of colonialism, racism and exclusion.'<sup>8</sup> There is evidence confirming that '[t]o be an Indigenous child in Canada correlates with poverty-related barriers, including income, education and culture, employment, health, housing, being taken into care and justice. The disparities among Indigenous

<sup>7</sup> See: UN Economic and Social Council. Indigenous Issues, Human rights and indigenous issues. Report of the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, Rodolfo Stavenhagen, Addendum. Mission to Canada. E/CN.4/2005/88/Add.3 2 December 2004.

<sup>8</sup> Available at: <http://www.ncwcnbes.net/documents/researchpublications/ResearchProjects/FirstNationsMetisInuitChildr enAndYouth/2007Report-TimeToAct/PressReleaseENG.htm>

and non-indigenous children are alarming...<sup>9</sup> Aboriginal children experience higher rates of malnutrition; disabilities; drug and alcohol abuse; and suicide than other children. In 2007, a Standing Senate Committee on Human Rights report<sup>10</sup> ('Senate Committee Report') also observed that Aboriginal children are living disproportionately in poverty and involved in the youth criminal justice and child protection systems.

The Committee's 2003 Concluding Observations welcomed Canada's Statement of Reconciliation and its '...regret for historic injustices committed against Aboriginal people, in particular within the residential school system' (para. 58), which injustices continue to underlie the realities of disadvantaged Aboriginal children's lives.

The Committee urges the Government to pursue its efforts to address the gap in life chances between Aboriginal and non-Aboriginal children. In this regard, it reiterates in particular the observations and recommendations with respect to land and resource allocation made by United Nations human rights treaty bodies, such as the Human Rights Committee..., the Committee on the Elimination of Racial Discrimination... and the Committee on Economic, Social and Cultural Rights... The Committee equally notes the recommendations of the Royal Commission on Aboriginal Peoples and encourages the State party to ensure appropriate follow-up (para 59).

Aboriginal children are a vital part of Canada's social fabric, increasing in number at the fastest rate of any identifiable group. Promoting their well-being and healthy development must be a priority for us all – today and into the future. Too many of these children remain, however, among the most vulnerable children as illustrated by significant gaps between how these children and many other Canadian children experience their worlds. Aboriginal children, affected by intergenerational disadvantages for Aboriginal peoples in general, require special measures to ensure they have opportunities to achieve outcomes equal to their non-Aboriginal peers. These special measures need to recognize that First Nations, Inuit and Metis are distinct populations of indigenous peoples who face unique challenges, have differing priorities and are differentially impacted by policy and decision-making at various government levels. This reality demands sensitivity and understanding to be constructively responsive to the rights of Aboriginal children, their families and their communities.

<sup>9</sup> Mary Ellen Turpel-Lafond (2007). *Protecting Rights of Indigenous Children in Realizing the UN Declaration on the Rights of Indigenous Peoples: Triumph, Hope, and Action*, p. 172.

<sup>10</sup> Canada, Standing Senate Committee on Human Rights, "Children: The Silenced Citizens: Effective Implementation of Canada's International Obligations with Respect to the Rights of Children" (2007). online: Standing Committee on Human Rights. Available at: [http://www.parl.gc.ca/39/1/parlbus/commbus/senate/Com-e/huma-e/rep-e/rep10apr07-e.htm#\\_Toc164844427](http://www.parl.gc.ca/39/1/parlbus/commbus/senate/Com-e/huma-e/rep-e/rep10apr07-e.htm#_Toc164844427)

Aboriginal and non-Aboriginal communities and organizations have galvanized to address the complex challenges to improving Aboriginal children's lives. While these efforts have led to some successes among Aboriginal peoples, providing hope and inspiration for today's Aboriginal children, current evidence suggests a bleak reality and future for many Aboriginal children. Canada's 2008 apology for residential schools and the resulting Truth and Reconciliation Commission has presented new opportunities to work towards a path of healing, reconciliation and renewal. Yet many hurdles remain to ensuring that Aboriginal children fully realize their entitlements under domestic and international human rights law. We ask the Committee to urge Canada to improve its commitment to implementing the CRC for these, and all, children in Canada today and in the future.

### 3. General measures of implementation (arts. 4, 42, 44)

#### 3.1 Legislation

In 2003, the Committee made the following observations to Canada:

The Committee notes that the application of a considerable part of the Convention falls within the competence of the provinces and territories, and is concerned that this may lead, in some instances, to situations where the minimum standards of the Convention are not applied to all children owing to differences at the provincial and territorial level (para 8).

The Committee urges the Federal Government to ensure that the provinces and territories are aware of their obligations under the Convention and that the rights in the Convention have to be implemented in all the provinces and territories through legislation and policy and other appropriate measures (para 9).

In its 2009 report, Canada referred to its response to the Senate Committee Report. The response stated that "[b]efore the Government tables a Bill in Parliament, the Government reviews proposed federal legislation for consistency with human rights protections including, where relevant, Canada's international human rights obligations respecting children."<sup>11</sup> Canada's report also stated that departments and agencies were required to respect Canada's international human rights obligations, pursuant to a Cabinet directive, and that lawyers with legal drafting responsibilities received training about Canada's obligations.

While some federal and provincial/territories laws have been strengthened to better protect children's lives and promote their rights, there remains a need to embed CRC principles in all domestic legislation in Canada. Child rights impact assessments, referred to in the following section, can assist with this process. Specifically, we ask the Committee to request that Canada, together with the provinces/territories, engage in a transparent, collaborative process of reviewing legislation for CRC compliance and incorporating CRC principles into all legislation affecting children's lives, including the Canadian Charter on Rights and Freedoms.

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<sup>11</sup> See Part I, *Implementing the International Human Rights of Children at Home*.

**Recommendation:**

**R1.** That Canada work with the provinces/territories over the next five years to:

- develop a rights-based lens for reviewing and amending legislation;
- review, together with non-governmental child rights specialists, the extent to which CRC principles are reflected in legislation affecting children's lives;
- amend legislation on a priority basis to ensure the CRC is embedded in legislation impacting children.

### 3.2 National plan of action

In its 2003 Concluding Observations, the Committee encouraged Canada:

...to ensure that a coherent and comprehensive rights-based national plan of action is adopted, targeting all children, especially the most vulnerable groups including Aboriginal...with a division of responsibilities, clear priorities, a timetable and a preliminary allocation of necessary resources in conformity with the Convention at the federal, provincial, territorial and local levels in cooperation with civil society. It also urges the Government to designate a systematic monitoring mechanism for the implementation of the national plan of action (para 13).

In response to the 2002 UN Special Session on Children, Canada formulated a national plan entitled *A Canada Fit for Children*.<sup>12</sup> We note that this plan committed to '...closing the gap between Aboriginal children and others in Canada' (para. 81) and improving Aboriginal children's lives, an objective responsive to its CRC obligations.

This includes building on our commitment to address the gap in life chances and health status between Aboriginal and non-Aboriginal children, working to strengthen preventative measures to curb the number of Aboriginal children coming into the child welfare system, and working with provinces and territories, Aboriginal leaders, and communities to improve education outcomes for children (para. 81).

...Together, we will strive to build supportive environments to improve the healthy development of Aboriginal children... Community-driven, integrated approaches to improve the well-being of Aboriginal children will be crucial to our progress. Continued efforts should be directed toward the development of partnerships and coordination among all sectors to promote and support indigenous, holistic responses (para. 81).

<sup>12</sup> Human Resources and Skills Development, 2004. Available at: <http://www.hrsdc.gc.ca/eng/cs/sp/sdc/socpol/publications/2002-002483/page00.shtml>

While we support Canada's commitment, we observe that there is no 'systematic monitoring mechanism' making it possible to determine whether the plan has been effectively implemented and evaluated. We have been unable to locate a centralized federal government body, for example, with responsibility for addressing, monitoring and reporting on whether the stated objectives have been met. While individual provinces have produced snapshots of Aboriginal childhood experiences, and could inform the plan, there is no federal body with sole responsibility for ensuring proper data collection, analysis and transparent reporting on Aboriginal children's issues.

In 2006, Canada conducted its first *Aboriginal Children's Survey (ACS)*, which collected information on the development and well-being of Aboriginal children under six years of age.<sup>13</sup> The survey identified young Aboriginal children's needs and sought to inform policy-making.<sup>14</sup> While an important initiative, it overlooks children from ages 6 to 18 with the effect that it remains critical to capture accurate and reliable data about outcomes for all Aboriginal children. Within this context, therefore, we request that the Committee reiterate to Canada that it develop a national plan for Aboriginal children and that the plan is informed by robust research together with relevant collaborative partnerships.

Child impact assessments can inform the adequacy of legislation in meeting its CRC obligations; the evaluation of a national plan for Aboriginal children; and contribute to CRC implementation. These assessments can promote better decision-making related to legislation, policies and programs that impact the everyday lives of all children, including Aboriginal children. They can potentially make the impact of decision-making on Aboriginal children's lives more visible while promoting transparency and accountability among those responsible for children's lives. Our offices and a federal children's commission can lead on initiatives to develop and implement the use of child impact assessments. We ask the Committee, therefore, to also request that Canada facilitate the development, adoption and use of this tool on a regular and systemic basis.

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<sup>13</sup> Available at: <http://www.statcan.gc.ca/aboriginal/acs/5801793-eng.htm>

<sup>14</sup> Ibid. See also Canada's 2009 report, para. 28.

**Recommendations:**

- R2.** That Canada develop and implement an Aboriginal children's national plan that is collaborative; informed by current and evolving research; properly funded; monitored for implementation and evaluated for outcomes against objectives. It is critical that this plan is linked to an Aboriginal child poverty reduction strategy with measurable outcomes.
- R3.** That Canada convene a special conference of federal/provincial/territorial representatives, with Aboriginal leaders and child delegates, to explore key issues specific to Aboriginal children. This conference could inform the national plan.
- R4.** That Canada facilitate the development, adoption and use of child impact assessments for proposed legislation, policies, programs and budgets affecting children's lives, making the results of these assessments publicly available.

### **3.3 National human rights institutions**

The Committee's General Comment 2 emphasizes national human rights institutions' (NHRI) critical role in promoting, monitoring and implementing the CRC. 'The Committee's principal concern is that the institution, whatever its form, should be able, independently and effectively, to monitor, promote and protect children's rights.'<sup>15</sup> The Committee has also advised that NHRI have the mandate to ensure that children who experience human rights violations have effective remedies through independent advice, advocacy and complaints procedures.<sup>16</sup>

In its 2003 Concluding Observations to Canada, the Committee stated:

The Committee notes that eight Canadian provinces have an Ombudsman for Children but is concerned that not all of them are adequately empowered to exercise their tasks as fully independent national human rights institutions in accordance with the Principles relating to the status of national institutions for the promotion and protection of human rights (the Paris Principles, General Assembly resolution 48/134 of 20 December 1993, annex). Furthermore, the Committee regrets that such an institution at the federal level has not been established (para 14).

The Committee recommends that the State party establish at the federal level an ombudsman's office responsible for children's rights and ensure appropriate funding for its effective functioning. It recommends that such offices be established in the provinces that have not done so, as well as in the three territories where a high proportion of vulnerable children live. In this respect, the Committee recommends that the State party take fully into account the Paris Principles and the Committee's general comment 2 on the role of national human rights institutions (para 15).

<sup>15</sup> See Committee General Comment 2. Available at: <http://www2.ohchr.org/english/bodies/crc/comments.htm>

<sup>16</sup> Ibid.

The Senate Committee Report also recommended '... that Parliament enact legislation to establish an independent Children's Commissioner to monitor implementation of the Convention on the Rights of the Child, and protection of children's rights in Canada. The Children's Commissioner should report annually to Parliament' (Recommendation 20). In 2009, Bill-418 was introduced into the Canadian parliament as a private members bill to establish a federal Children's Commissioner of Canada with a mandate to 'ensure governmental accountability in respect of the Convention, and to promote, monitor and report on the effective implementation of Canada's obligations under the Convention that are within the legislative authority of Parliament...'<sup>17</sup> This initiative expired at the end of Canada's last parliamentary session.

In Canada, children's specialized offices exist in most provinces and territories. We concur with the Committee, however, that these offices must exist in every province/territory and that their functions need to be consistent with the Committee's General Comment 2, the Paris Principles and child rights principles that support promoting, protecting and monitoring the implementation of children's rights. The existing offices will continue to promote children's human rights and to assist children with pursuing effective remedies – individually and collectively – for human rights violations within the allowable limits of our current legislated mandates. Aboriginal children, as this report identifies, are among the most vulnerable to human rights violations. Some provincial and territorial offices, however, do not have clear jurisdiction on Aboriginal lands, which leaves a gap in child advocacy that a federal Children's Commissioner can fill for affected Aboriginal children, including those children with concerns about possible rights violations.

Canada's 2009 report indicates that the '...Government of Canada endeavours to strengthen coordination and monitoring of children's rights through interdepartmental and intergovernmental initiatives... By ensuring regular discussion of children's rights and related issues, the working group [Interdepartmental Working Group on Children's Rights] promotes awareness and understanding of the obligations under the *Convention on the Rights of the Child* (CRC) amongst officials' (para 34). While an important initiative, we ask the Committee to remind Canada about the key role that a federal Children's Commissioner, along with the provincial/territorial child advocacy offices, can also play in monitoring and strengthening child rights implementation.

With adequate resources in place, the federal Children's Commissioner and the provincial/territorial children's offices can jointly support one another in educating, monitoring and implementing child rights. We envision our work informing the federal Children's Commissioner's work, noting that together we can also:

- establish common policies and practices;
- clarify overlapping jurisdictions;

<sup>17</sup> Available at: <http://www.unicef.ca/portal/SmartDefault.aspx?at=2422>

- contribute to Canada's reporting process to the Committee;
- contribute to other UN human rights treaties' reporting processes where Canada has obligations and when issues arise that impact children's lives.

We encourage the federal and provincial/territorial governments, therefore, to recognize our mandates as potentially complementary to implementing Canada's legal obligations under various international human rights treaties, including the CRC. Our mandates have particular significance for all children, including Aboriginal children, because Canada has no federal children's commissioner (unlike other countries) and because children often lack opportunities to be heard about policy matters affecting their everyday worlds. In our experience, children, who are vulnerable to human rights violations, may also lack access to meaningful processes that provide opportunities for children to express their concerns and pursue meaningful remedies for breaches of rights. As the Committee has recognized, NHRI are essential to advancing children's rights in these areas.

In keeping with the Committee's 2003 observation that, regrettably, Canada has not established a Children's Commissioner for Canada, we ask the Committee to request that Canada make the creation of a federal children's commissioner a priority for all children. It is critical that a human rights perspective informs this role and that it ensures children have a voice in matters affecting their everyday worlds, particularly when children experience human rights violations and seek reparation for those violations.

**Recommendations:**

- R5.** That Canada establish a federal Children's Commissioner role with a human rights mandate, consistent with the Paris Principles, and General Comment 2 and General Comment 5, to address significant issues affecting children's lives<sup>18</sup>, including the lives of Aboriginal children. Canada should develop and implement this role in collaboration with children and adults working with and for children in key areas of children's lives.
- R6.** That Canada establish a federal Children's Commissioner role that ensures that children have access to justice, including access to effective non-judicial administrative mechanisms for hearing their concerns and providing remedies to human rights violations.

### **3.4 Allocation of resources**

In its 2003 Concluding Observations, the Committee suggested that Canada review the National Child Benefit system to eliminate any '...negative or discriminatory effects it may have on certain groups of children' (para 17). The Committee recommended that Canada prioritize '...budgetary allocations so as to ensure implementation of the economic, social and cultural rights of children, in particular those belonging to marginalized and economically disadvantaged groups...' (para 18). The Committee encouraged Canada to identify child rights priorities and to provide budget details specific to children, particularly marginalized groups, at all government levels after effectively evaluating budgetary expenditures on children (para 18).

It is encouraging to note that in its 2009 report, Canada identified its intention to '...use budgetary allocations to advance the rights of children, both through the Government's own programming and by supporting non-governmental organizations that work with children' (para. 25). As Canada illustrates, it has directed funding at some children's services and programs. However, Canada has not yet adopted a national budget for children, focusing on vulnerable groups such as Aboriginal children and identifying budgetary allocations specific to children's best interests.

We support UNICEF Canada's call, therefore, for '...the adoption of a national budget that prioritizes the best interests of Canadian children across all macroeconomic and fiscal policy measures.'<sup>19</sup> This national budget needs to address resources allocations to children, particularly in relation to children's services; more general budgetary impacts on children; and federal/provincial/territorial transfer payments. This approach will assist all those persons working for and with all children, including Aboriginal children, with improving their practice and policy decision-making. It will also facilitate Canada's obligation to implement the CRC to the fullest extent possible.

<sup>18</sup> The Commission des droits de la personne et des droits de la jeunesse of Quebec agrees with this recommendation, insofar as the National Children's Commissioner's mandate respects the constitutional distribution of legislative powers.

<sup>19</sup> Available at: [www.unicef.ca](http://www.unicef.ca)

We observe that Canada, and the provinces/territories, provide information on publicly available databases about expenditures related to children's well-being as determined by a common set of indicators agreed upon by them. Children's lives, including those of vulnerable groups such as Aboriginal children, are significantly affected by government budgets, making it critical to ensure that budgetary decisions are informed by a child rights approach. Within this context, therefore, we ask the Committee to request that Canada improve its current budgetary analysis of issues specific to children and develop a national children's budget, making this issue an immediate priority for implementation. We also request that the Committee suggest to Canada that it expand the areas currently reported upon; correlate this expansion with improved data collection methods; and adopt a budget accountability model that shows how many dollars are spent on children.

**Recommendations:**

- R7.** That Canada make it a priority to improve its current analysis of budgetary decision-making and its impact on children, specifically in relation to vulnerable groups such as Aboriginal children.
- R8.** That Canada expand the areas currently reported upon; correlate this expansion with improved data collection methods; and adopt a budget accountability model that shows how many dollars are spent on children in key areas.
- R9.** That Canada utilize its improved budgetary analysis to inform, develop and implement a national children's budget with clearly targeted funding intended to improve children's lives. This budget development should be informed by consultations with individuals working with and for children and monitored and evaluated for budgetary effectiveness at strategic intervals.

### **3.5 Data collection**

The Committee's General Comment 11 is helpful in its reference to data collection within an indigenous context.

States parties should, in cooperation with indigenous families and communities, collect data on the family situation of indigenous children, including children in foster care and adoption processes. Such information should be used to design policies relating to the family environment and alternative care of indigenous children in a culturally sensitive way. Maintaining the best interests of the child and the integrity of indigenous families and communities should be primary considerations in development, social services, health and education programmes affecting indigenous children (para. 47).

The Committee's 2003 Concluding Observations to Canada made specific recommendations regarding data collection.

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

On a related issue, the Committee also '...welcomed the intention of the State party to establish a statistics institute for Aboriginal people' (para 19). It noted, however, that information in Canada's previous report was '...not sufficiently developed, disaggregated and well synthesized for all areas covered by the Convention, and that all persons under 18 years are not systematically included in the data collection relevant to children. The Committee would like to recall its previous concern and recommendation relating to information gathering (CRC/C/15/Add.37, para. 20), maintaining that it has not been addressed sufficiently' (para 19).

To our knowledge, Canada has not established a statistics institute for Aboriginal people. There is no centralized federal institute focused on disaggregated data collection, analysis and research dissemination for Aboriginal children, with the result that Canada is unable to report on Aboriginal children's lives from a holistic perspective. There is a lack of disaggregated data that makes clear distinctions between Aboriginal and non-Aboriginal children and that differentiates among First Nations, Metis and Inuit children for comparative purposes. Taking a holistic approach to Aboriginal children's lives, as referred to by Canada in its 2009 report, continues to be hampered by the lack of quality data and synthesis informed by a rights perspective – an issue that concerned the Committee in 2003.

The *Aboriginal Children's Survey*, while an important initiative in 2006, was not fully sufficient for informing policy decisions for all Aboriginal age groups and distinctions among them nor was the survey situated within a monitoring scheme that measured the effectiveness and outcomes of government initiatives. The *National Longitudinal Survey of Children and Youth* (2008/2009 Data Collection Cycle 8)<sup>20</sup>, done by Statistics Canada and Human Resources and Skills Development Canada, is a long-term study designed '...to monitor the development and well-being of Canada's children from infancy to adulthood.'<sup>21</sup> While it offers data specific to children in Canada, it does not provide

<sup>20</sup> Available at: <http://www.statcan.gc.ca/cgi-bin/imdb/p2SV.pl?Function=getSurvey&SDDS=4450&lang=en&db=imdb&adm=8&dis=2>

<sup>21</sup> Ibid, p. 9.

disaggregated data about Aboriginal children within the various categories in the survey. This survey also excludes First Nations persons residing on reserve.

As a result, data collection for Aboriginal children remains problematic and is not 'sufficiently developed, disaggregated and well synthesized for all areas covered by the Convention' as the Committee observed. Canada's 2009 report does not provide the Committee with an accurate overall picture of Aboriginal children's lives today. Research relevant to Aboriginal children's lives needs to be envisioned as a collaborative, nationwide endeavor whereby partners – Aboriginal, federal and provincial/territorial governments and researchers – agree on relevant indicators addressing the full scope of children's rights. Harmonized and disaggregated data collection at the federal level would enable it to collate, analyze, compare and report more accurately on leading indicators within key domains of Aboriginal children's lives (such as health, education, child welfare, justice and family status). Without ongoing and proper data gathering, analysis and dissemination, we cannot measure whether we are making progress in improving outcomes for Aboriginal children or which initiatives are making a difference.

The Committee noted in General Comment 11 that disaggregated data collection, done by research institutes for example, enables discrimination or potential discrimination to be identified.

Among the positive measures required to be undertaken by States parties is disaggregated data collection and the development of indicators for the purposes of identifying existing and potential areas of discrimination of indigenous children. The identification of gaps and barriers to the enjoyment of the rights of indigenous children is essential in order to implement appropriate positive measures through legislation, resource allocation, policies and programmes (para 26).

Robust research can also give a profile to those communities that are thriving and where children enjoy good outcomes. These examples can help point the way to a better path for Aboriginal children by using evidence to inform practices and policies affecting their lives – essential reasons for implementing the Committee's recommendations. We ask, therefore, that the Committee urge Canada to lead on a collaborative partnership, with provinces/territories, Aboriginal representatives, researchers and others, that will examine ways to improve research approaches. We request that the Committee ask Canada to improve its approach to research relating to Aboriginal children within two years.

**Recommendation:**

**R10.** That Canada develop a national Aboriginal Children's Institute for Research, in collaboration with Aboriginal research organizations and initiatives, that:

- identifies key issues in Aboriginal children's lives;
- examines, in collaborative partnerships, ways to improve research approaches;
- identifies gaps in research;
- leads on research initiatives informing these gaps while engaging in rigorous research practices;
- utilizes a child impact assessment tool;
- coordinates other research data and results specific to Aboriginal children;
- provides information to Canada, and others, that assists with reporting to the Committee and with decision-making specific to Aboriginal children's lives;
- provides information about good practices in Aboriginal research, including relevant ethical considerations.

## 4. General principles (arts. 2,3, 6 and 12)

### 4.1 Non-discrimination

As indicated above, the Committee's General Comment 11 makes specific reference to discrimination facing indigenous children throughout the world.

The Committee has observed that indigenous children face significant challenges in exercising their rights... Indigenous children continue to experience serious discrimination contrary to article 2 of the Convention in a range of areas, including in their access to health care and education, which has prompted the need to adopt this general comment (para. 5).

The Committee stated that '...indigenous children are among those children who require positive measures in order to eliminate conditions that cause discrimination and to ensure their enjoyment of the rights of the Convention on equal level with other children', urging States such as Canada to implement 'special measures in order to ensure that indigenous children have access to culturally appropriate services in the areas of health, nutrition, education, recreation and sports, social services, housing, sanitation and juvenile justice'.<sup>22</sup> The Committee's General Comment 11 draws particular attention to those children who may encounter 'multiple facets of discrimination and the need to consider varying situations among indigenous children' (para 29).<sup>23</sup>

In its 2003 Concluding Observations, the Committee expressed concern at the '...persistence of de facto discrimination against certain groups of children...[such as Aboriginal children]' (para. 21) in Canada, making specific recommendations in this area.

The Committee recommends that the State party continue to strengthen its legislative efforts to fully integrate the right to non-discrimination (article 2 of the Convention) in all relevant legislation concerning children, and that this right be effectively applied in all political, judicial and administrative decisions and in projects, programmes and services that have an impact on all children, in particular children belonging to minority and other vulnerable groups such as children with disabilities and Aboriginal children. The Committee further recommends that the State party continue to carry out comprehensive public education campaigns and undertake all necessary proactive measures to prevent and combat negative societal attitudes and practices. The Committee requests the State party to provide further information in its next report on its efforts to promote cultural diversity, taking into account the general principles of the Convention (para 22).

<sup>22</sup> Recommendations of CRC Day of General Discussion on the Rights of Indigenous Children, 2003, para. 9.

<sup>23</sup> *Convention on the Rights of Persons with Disabilities*, preamble. *United Nations Declaration on the Rights of Indigenous Peoples*, A/RES/61/295, articles 21, 22.

The Committee's guidance on general measures of implementation requires Canada to identify groups of children, such as Aboriginal children, whose realization of rights may demand special measures (see Committee's General Comment 5). According to the Committee, addressing discrimination may require changes in legislation, administration and resource allocation, as well as educational measures to change attitudes.<sup>24</sup> Canada's 2009 report made reference to its initiatives for '...promoting respect for and awareness of Canada's cultural diversity and to promote the elimination of barriers that discriminate and keep individuals from fully participating in Canadian society' (para. 39). While we are encouraged to see Canada's commitment to eliminating barriers, there was no specific reference to Aboriginal children, their susceptibility to discrimination and specific initiatives intended to eliminate discriminatory legislation, policies, practices and attitudes affecting these children.

In 2007, the Canadian Human Rights Commission (CHRC) received a complaint alleging that Canada, through its Minister of Indian and Northern Affairs (INAC), racially discriminated against First Nations children by providing fewer child welfare benefits on reserves. The CHRC sent the complaint to the Canadian Human Rights Tribunal ('Tribunal') for examination in 2009 and in 2011, the CHRC asked the Tribunal to expedite its hearing.<sup>25</sup>

There are two main reasons why the Commission determined that the public interest is at issue in this case. First, is the humanitarian issue of under-funding, and its documented impact on the welfare of vulnerable children on reserves. The hardship of children makes this an urgent matter.<sup>26</sup>

In 2011 the Tribunal dismissed the case, determining that Canada could '...provide a different, and inequitable, level of service to First Nations children so long as it does so consistently to all First Nations children living on reserve.'<sup>27</sup> The Tribunal stated that the services INAC provided to '...First Nations children in Ontario cannot be compared to the level of service provided by the Provinces to non on-reserve children; as both are different service providers and each serves separate service recipients.'<sup>28</sup> The Tribunal's decision has been appealed to Canada's Federal Court. We are watching this process as it continues at the present time.

Situating non-discrimination in its broader context within Canada, Aboriginal peoples lost their lands, resources and cultural identities with a resulting legacy of inconsistent, and ongoing, discriminatory policies and legislation in many areas affecting Aboriginal children and their families. Aboriginal women, for example, have experienced discrimination under federal legislation, which has denied them equal rights to Aboriginal men and led to negative experiences ultimately impacting their children. Under such legislation, Aboriginal women (registered under the *Indian Act*<sup>29</sup>), lost their

<sup>24</sup> See Committee's General Comment 5 on General Measures of Implementation, para. 12.

<sup>25</sup> Available at: [http://www.chrc-ccdp.gc.ca/media\\_room/news\\_releases-eng.aspx?id=633](http://www.chrc-ccdp.gc.ca/media_room/news_releases-eng.aspx?id=633)

<sup>26</sup> Canadian Human Rights Commission. Available at: <http://www.chrc-ccdp.ca/default-eng.aspx>

<sup>27</sup> Decision available at: <http://www.chrt-tcdp.gc.ca/NS/index-eng.asp>

<sup>28</sup> Ibid.

<sup>29</sup> Available at: <http://laws.justice.gc.ca/eng/acts/l-5/>

status when they married non-Aboriginal men, who retained their status under the same circumstances. As a result, Aboriginal women and their children were unable to live within their Aboriginal communities on reserves and receive equal benefits.

In addition, under federal legislation Aboriginal men who married non-Aboriginal women could pass their Aboriginal status to two generations. Aboriginal women, however, could only pass their Aboriginal status to their children but not their grandchildren. This discriminatory effect has resulted in identity loss and inequalities for their Aboriginal children. While amendments to federal legislation have been made throughout the years, legislation continues to perpetuate discriminatory policies and practices that must be addressed. The devastating effects of colonization, perpetuated by discriminatory policies and legislation, have left a legacy of Aboriginal people requiring equal access to quality public services.

Aboriginal children who require medical and other services may be denied the same services available to other children because of jurisdictional disputes between Canada and the provincial/territorial governments. 'Jordan's Principle'<sup>30</sup> was named for Jordan River Anderson (a child member of the Norway House Cree Nation in Manitoba) who died while governments disputed his home care expenses.

Jordan's Principle is a child first principle to resolving jurisdictional disputes within and between federal and provincial/territorial governments. It applies to all government services available to children, youth and their families. Examples of services covered by Jordan's Principle include but are not limited to: education, health, child care, recreation, and culture and language services.<sup>31</sup>

The government of 'first contact' must pay for Aboriginal children and families' services and seek reimbursement at a later date. The principle applies specifically to First Nations status children who ordinarily reside on reserve. We ask the Committee to request that Canada fully implement this principle and institute a monitoring plan to ensure the principle is beneficial.

In 2004 the UN Human Rights Special Rapporteur made several recommendations to Canada.

Despite the progress already achieved, Aboriginal people are justifiably concerned about continuing inequalities in the attainment of economic and social rights... (para 85).

Priority attention must be given to the persistent disparities between Aboriginal people and other Canadians as reflected in higher poverty rates and lower than average health, educational, housing and welfare services for Aboriginal people, which continue to be among the most pressing issues facing Aboriginal people (para 86).

<sup>30</sup> Available at: <http://www.fnfcfs.com/jordans-principle>

<sup>31</sup> Ibid

Our work has identified that 'persistent disparities' continue to exist alongside systemic discrimination towards Aboriginal children, and their families, in key areas such as housing; education; health; allocation of resources; access to services; and services delivery. In 2011, the Office of the Auditor General of Canada's status report<sup>32</sup>, once again, identified serious systemic issues affecting Aboriginal child and family experiences. This report – an analysis of programs for First Nations on reserve – registers the Auditor General's concern that Canada supported programs, directed at addressing social and economic challenges such as 'ill health, insufficient and unsafe housing, high unemployment, polluted water supplies, inadequate education, poverty, and family breakdown'<sup>33</sup> still resulted in First Nations reserve conditions significantly below the national average and that more progress had not been made.

We agree with the Committee, as discussed in the foregoing data collection section, that improving research methods can help to identify where discrimination exists. This improvement needs to co-exist with more effective initiatives to eradicate discriminatory systemic policies and practices while promoting equality for Aboriginal children. We note that while the legal disputes proceed, over the past five years no political or administrative discussions have taken place to address systemic discrimination and proper implementation of Aboriginal children's human rights.

Within this context, we support Canada's initiatives to '...enhance respect for and awareness of Canada's cultural diversity and to promote the elimination of barriers that discriminate and keep individuals from fully participating in Canadian society' (para. 39), as indicated in its 2009 report. We request that the Committee ask Canada to apply a child rights impact assessment within this context. We also ask the Committee to request that Canada ensure that there is no discrimination in funding for Aboriginal children and that equality in funding exists in key areas such as child welfare, health and education services for all Aboriginal children.

**Recommendations:**

- R11.** That Canada and others responsible for implementing Aboriginal children's right to be free from discrimination ensure equality in funding, access to services and provision of services for all Aboriginal children requiring child welfare, health and education services.
- R12.** That Canada fully implement 'Jordan's Principle' and monitor its implementation.

<sup>32</sup> Available at: [http://www.oag-bvg.gc.ca/internet/English/parl\\_oag\\_201106\\_e\\_35354.html](http://www.oag-bvg.gc.ca/internet/English/parl_oag_201106_e_35354.html)

<sup>33</sup> Ibid.

## 4.2 Best interests

The Committee's General Comment 11 has stated that the children's 'best interests' are conceived as individual and collective rights, which has particular application to indigenous children and their cultural rights. The best interests principle requires Canada, and other States, to engage in 'active measures throughout their legislative, administrative and judicial systems that would systematically apply the principle by considering the implication of their decisions and actions on children's rights and interests'.<sup>34</sup> These measures include training and education for child serving professions about the relationship between collective cultural rights and the best interests principle.<sup>35</sup>

In 2003 the Committee observed that it remained '...concerned that the principle that primary consideration should be given to the best interests of the child is still not adequately defined and reflected in some legislation, court decisions and policies affecting certain children, especially... Aboriginal children. Furthermore, the Committee is concerned that there is insufficient research and training for professionals in this respect' (para 24). The Committee recommended that Canada analyze and implement the best interests principle by reviewing child legislation; legal procedures; judicial and administrative decisions; and projects, programs and services impacting children's lives. The Committee encouraged Canada to ensure the best interests principle implementation through research and educational programs for professionals (para 25).

In its 2009 report, Canada acknowledged that the best interests principle is an '... important consideration in the development of legislation, policies and programs that affect children' (para. 40). While there is evidence of research and educational programs regarding the best interests principle and children's rights in general, it is our impression that this work is done predominantly by civil society and provincial/territorial advocacy organizations. The *Report of the Royal Commission on Aboriginal Peoples*<sup>36</sup> made specific reference to Aboriginal children and the need for government engagement alongside advocates promoting Aboriginal children's best interests.

The best interests of Aboriginal children will be served only by determined and sustained efforts on the part of Aboriginal and non-Aboriginal governments, institutions, and people to recognize and support each other's contributions to the common goal.<sup>37</sup>

In our experience, the best interests of Aboriginal children continue to be underserved by policy decision-makers. Research indicates that Aboriginal children are faring far worse than their non-Aboriginal peers and these trends have been ongoing. Aboriginal children comprise an increasing proportion of all children in Canada<sup>38</sup>, but they also comprise a population continually

<sup>34</sup> CRC, General Comment 5 on General Measures of Implementation, 2003, para. 12.

<sup>35</sup> Committee's General Comment 11.

<sup>36</sup> Available at: <http://www.parl.gc.ca/Content/LOP/ResearchPublications/prb9924-e.htm>

<sup>37</sup> Available at: <http://www.parl.gc.ca/Content/LOP/ResearchPublications/prb9924-e.htm>

<sup>38</sup> Available at: <http://www.statcan.gc.ca/pub/89-634-x/89-634-x2008001-eng.htm>

overrepresented in statistics that consistently show them experiencing poor outcomes – a result of failing to implement the best interests principle in ways the Committee has recommended to facilitate the realization of Aboriginal children's rights.

It is critical to note that the CRC's best interests principle applies to 'all actions concerning children' and is wide-ranging in the duties it places on 'public and private social welfare institutions, courts of law, administrative authorities or legislative bodies' (see article 3). It is also essential when considering the best interests principles and its relevance to Aboriginal children, to associate this principle with Aboriginal children's collective rights as stipulated in the *UN Declaration on the Rights of Indigenous Peoples* (see articles 7, 14, 17, 21, 22 and the Annex). For that reason, we ask the Committee to encourage Canada to institute an educational program, as recommended by the Committee, and to implement such a program in concert with an overall legislative review.

**Recommendations:**

- R13.** That Canada conduct a review of the 'best interests principle' in federal legislation concerning children, legal procedures in federal courts, judicial and administrative decisions, projects, policy, programs and services that have an impact on children.
- R14.** That Canada designates funding for educational child rights programs that include training, led by Aboriginal organizations, about the best interests principle and its practical application for families, communities and service providers who have responsibilities for Aboriginal children.

### 4.3 Child participation

The Committee's General Comment 12 – the right of the child to be heard – is extremely valuable guidance to Canada and others with responsibilities for promoting the well-being of Aboriginal children. We note, as well, the Committee's General Comment 11:

States parties are reminded that pursuant to article 12 of the Convention, all children should have an opportunity to be heard in any judicial or criminal proceedings affecting them, either directly or through a representative. In the case of indigenous children, States parties should adopt measures to ensure that an interpreter is provided free of charge if required and that the child is guaranteed legal assistance, in a culturally sensitive manner (para 76).

General Comments 11 and 12, set within the CRC's participatory articles framework, make apparent the distinction between the right of individual children and the rights of groups of children to be heard, stating that '...the Committee strongly recommends that States parties exert all efforts to listen to or seek the views of those children speaking collectively' (para. 10). The need for States to listen

to the views of children 'speaking collectively', in our opinion, highlights the critical role of children's advocates who support and represent the collective voices of all children, including Aboriginal children.

The views expressed by children may add relevant perspectives and experience and should be considered in decision-making, policymaking and preparation of laws and/or measures as well as their evaluation.

These processes are usually called participation. The exercise of the child's or children's right to be heard is a crucial element of such processes. The concept of participation emphasizes that including children should not only be a momentary act, but the starting point for an intense exchange between children and adults on the development of policies, programmes and measures in all relevant contexts of children's lives (para 12 and 13).

The Committee emphasizes that while children have the right not to participate, it is essential that children receive 'all necessary information and advice' so that children can make informed decisions that reflect their own best interests. This approach highlights the complexity of child participation and how associations need to be made between CRC Article 12, as a core participatory principle, and other CRC participatory articles and contexts. A federal Children's Commissioner, with the support of provincial and territorial children's offices, can assist Canada with understanding the complexity of child participation; engaging in meaningful ways with children; and ensuring that decision-making, policy making, law development and evaluations are informed by children's voices. To do so requires statutory support and adequate resources.

Within this context, General Comment 11 states child participation must include hearing from children who have concerns and seek redress for wrongdoing, including possible human rights violations.

(e) Complaints, remedies and redress

Legislation is needed to provide children with complaint procedures and remedies when their right to be heard and for their views to be given due weight is disregarded and violated.<sup>39</sup> Children should have the possibility of addressing an ombudsman or a person of a comparable role in all children's institutions, inter alia, in schools and day-care centres, in order to voice their complaints. Children should know who these persons are and how to access them. In the case of family conflicts about consideration of children's views, a child should be able to turn to a person in the youth services of the community (para. 46).

<sup>39</sup> See: Committee's General Comment 5 (2003) on general measures of implementation of the Convention on the Rights of the Child, para. 24.

If the right of the child to be heard is breached with regard to judicial and administrative proceedings (art. 12, para. 2), the child must have access to appeals and complaints procedures which provide remedies for rights violations. Complaints procedures must provide reliable mechanisms to ensure that children are confident that using them will not expose them to risk of violence or punishment (para. 47).

Children in alternative care, where high numbers of Aboriginal children reside, must be free to express their views, including their concerns. We agree with the Committee that these children can particularly benefit from provincial/territorial children's offices monitoring '...compliance with the rules and regulations governing the provision of care, protection or treatment of children in accordance with the obligations under article 3 (para 97).'<sup>40</sup> As the Committee identified, unrestricted access to these children to hear their views directly, including their concerns, is essential. We also agree that this role makes it possible to assess how freely children are able to express their views and make complaints about possible human rights violations.

We are aware that the UN Human Rights Council passed a new resolution for an optional protocol to the Convention on the Rights of the Child for a communications procedure, adopted without a vote as orally revised in June 2011.<sup>41</sup> This optional protocol emphasizes the significance of children as rights bearers and upholds their entitlement to complain through an international process when no effective remedies are available to them within their own countries. We look forward to the presentation of the final optional protocol to the UN General Assembly for adoption in December 2011, urging Canada to ratify this protocol when available.

We note that Canada did not address Article 12, as a core CRC principle, in its 2009 report. As a result, it is unclear what initiatives, if any, Canada has undertaken to implement Article 12 and other CRC participatory articles. We request that the Committee examine Canada on this issue, encouraging Canada to implement all CRC participatory articles in tangible ways that are meaningful to children and, secondly, that promote children's voices informing decisions, policies and legislation that affects their everyday worlds. We also ask the Committee to request that Canada review, alongside the provinces/territories, what, if any, redress mechanisms exist for Aboriginal children with concerns about public services and rectify existing gaps in opportunities for those voices to be heard.

<sup>40</sup> Committee General Comment 12.

<sup>41</sup> See: <http://portal.ohchr.org/portal/pls/portal/docs/1/4236663.PDF>

**Recommendations:**

- R15.** That Canada, in collaborative partnerships, establish a national Aboriginal child participation initiative, with an emphasis on child rights education and the implementation of participatory rights so as to contribute to CRC overall implementation, raise the profile of Aboriginal children and reduce their vulnerability.
- R16.** That the future federal Children's Commissioner's mandate promotes child participation, including the participation of children who have concerns and are seeking redress for possible wrongdoing.
- R17.** That the future federal Children's Commissioner's mandate is coordinated with provincial child advocacy mandates to facilitate the implementation of children's participatory rights equally across Canada and to ensure children's views inform policy decision-making about matters affecting their lives.

## 5. Family environment and alternative care (arts. 5, 9–11, 18–21, 25, 27, 39)

### 5.1 Children deprived of a family environment

The Committee states in its General Comment 11 that:

...States should always ensure that the principle of the best interests of the child is the paramount consideration in any alternative care placement of indigenous children... In States parties where indigenous children are overrepresented among children separated from their family environment, specially targeted policy measures should be developed in consultation with indigenous communities in order to reduce the number of indigenous children in alternative care and prevent the loss of their cultural identity. Specifically, if an indigenous child is placed in care outside their community, the State party should take special measures to ensure that the child can maintain his or her cultural identity (para. 48).

Aboriginal children have a right to be safe and supported in their homes and in their communities. Serious systemic issues affecting Aboriginal people have resulted in disproportionate rates of child abuse and neglect, leading to Aboriginal children's removal and placement in alternative care for protection reasons.<sup>42</sup> In British Columbia, Aboriginal children are six times more likely to be taken in care than non-Aboriginal children<sup>43</sup> and in 2010 represented 54% of the province's alternative care child population.<sup>44</sup> Other provinces/territories have more alarming levels of over-representation of Aboriginal children in alternative care. Among those Aboriginal children are children living away from their home communities, resulting in their heightened vulnerability.

As we have come to understand the vulnerability of these children as adults, we have a greater societal awareness about how to reduce adverse childhood experiences to promote resilience and safer lives as these children move from childhood to adulthood. This awareness, however, needs to be reinforced by legislation, policy and practice commitments to address the critical issue of Aboriginal children in alternative care. We request that the Committee ask Canada to adopt the *United Nations Guidelines for the Alternative Care of Children* – guidelines that meet the evidence-based global norms for alternative care<sup>45</sup> – in any situations where it has jurisdiction over children in alternative care. The following sections offer more detail about related underlying systemic issues and recommendations to prevent Aboriginal children from requiring placement outside their family home.

<sup>42</sup> Available at: <http://www.cccw-cepb.ca/sites/default/files/publications/en/AboriginalChildren23E.pdf>

<sup>43</sup> Office of the Auditor General of British Columbia, *Management of Aboriginal Child Protection Services: Ministry of Children and Family Development* (Victoria: Office of the Auditor General of British Columbia, 2008). Available at: [http://www.bcauditor.com/include/view\\_file.asp?id=10&type=publication](http://www.bcauditor.com/include/view_file.asp?id=10&type=publication).

<sup>44</sup> Ibid.

<sup>45</sup> A resolution for these Guidelines was adopted by the UN General Assembly on November 20, 2009 and they were subsequently adopted by the Child Welfare League of Canada in June 2010.

**Recommendation:**

**R18.** That Canada adopt the United Nations Guidelines for the Alternative Care of Children in situations where it has jurisdiction over children in alternative care.

## 5.2 Abuse and neglect

The Committee's 2003 Concluding Observations for abuse and neglect state:

The Committee welcomes the efforts being made by the State party to discourage corporal punishment by promoting research on alternatives to corporal punishment of children, supporting studies on the incidence of abuse, promoting healthy parenting and improving understanding about child abuse and its consequences. However, the Committee is deeply concerned that the State party has not enacted legislation explicitly prohibiting all forms of corporal punishment and has taken no action to remove section 43 of the Criminal Code, which allows corporal punishment (para 32).

The Committee recommends that the State party adopt legislation to remove the existing authorization of the use of "reasonable force" in disciplining children and explicitly prohibit all forms of violence against children, however light, within the family, in schools and in other institutions where children may be placed (para 33).

All children, including Aboriginal children, may be subjected to corporal punishment. We observe that within Canada a national coalition of organizations has developed a *Joint Statement on Physical Punishment of Children and Youth*<sup>46</sup>, currently endorsed by approximately 433 organizations and individuals.

Based on an extensive review of research, the Joint Statement provides an overview of the developmental outcomes associated with the use of physical punishment. The evidence is clear and compelling – physical punishment of children and youth plays no useful role in their upbringing and poses only risks to their development. The conclusion is equally compelling – parents should be strongly encouraged to develop alternative and positive approaches to discipline.<sup>47</sup>

We fully support the Joint Statement and its recommendations to promote awareness among Canadians about physical punishment's harmful effects on children; develop universal parenting education; and provide equal protection to children and adults who experience physical assaults.

<sup>46</sup> Available at: <http://www.cheo.on.ca/en/physicalpunishment>

<sup>47</sup> Ibid.

We agree that responsibility for action lies with all adults mandated with implementing children's right to be free from harm as stipulated in CRC article 19. We request that the Committee ask Canada to lead on partnership initiatives to develop and promote culturally sensitive parenting programs, which include alternative forms of discipline to physical punishment.

Within the broader realm of abuse and neglect, Aboriginal children face significant challenges in realizing their rights. The *Canadian Incidence Study of Reported Child Abuse and Neglect (2008)*<sup>48</sup> is a national study of reported child abuse and neglect investigations. The study notes that Aboriginal children are overrepresented in the foster care system and '... the rate of substantiated child maltreatment investigations was four times higher in Aboriginal child investigations than non-Aboriginal child investigations. Twenty-two percent of substantiated investigations involved children of Aboriginal heritage.'<sup>49</sup>

Societal causes 'such as poverty, multi-generational trauma and social dislocation' may not be well considered<sup>50</sup> within child welfare approaches, potentially leading to circumstances in which Aboriginal children in alternative care are adopted when their families are living in poverty.<sup>51</sup> The Royal Commission report on Aboriginal Peoples concluded that 'the continued high rates of children in care outside their homes indicate a crisis in Aboriginal family life.'<sup>52</sup> While the causes of over-representation are complex, there is sufficient evidence of systemic disparity impacting Aboriginal child and family experiences to warrant new child welfare strategies more sensitive to systemic considerations.

Systemic factors, abuse and neglect and Aboriginal children's placement in alternative care have an inherent relationship. The following section provides more detail about the challenges many Aboriginal children encounter as they grow towards adulthood. We ask the Committee to request that Canada lead on initiatives that use research and contributions from partners to improve practices and policy decision-making about children subjected to abuse and neglect. Reducing Aboriginal child maltreatment and numbers of Aboriginal children in alternative care, requires individuals, civil society and governments within Canada to work together – with children – to address underlying systemic issues facing Aboriginal children and their families today.

<sup>48</sup> Available at: <http://www.phac-aspc.gc.ca/cm-vee/csca-ecve/2008/index-eng.php>

<sup>49</sup> Ibid, p.53.

<sup>50</sup> Available at: <http://www.fnfcfs.com/docs/ISGReport.pdf>

<sup>51</sup> Available at: 2626<http://www.rcybc.ca/Images/PDFs/Op%20Eds/Van%20Sun%200p%20Ed%20Aug%202009%20FINAL.pdf>

<sup>52</sup> 27 VOLUME 3 Gathering Strength; Chapter 2 - The Family Available at: [http://www.collectionscanada.gc.ca/webarchives/20071218071240/http://www.ainc-inac.gc.ca/ch/rcap/sg/si6\\_e.html](http://www.collectionscanada.gc.ca/webarchives/20071218071240/http://www.ainc-inac.gc.ca/ch/rcap/sg/si6_e.html)

**Recommendations:**

**R19.** That Canada lead on partnership initiatives to develop and promote culturally sensitive parenting programs, which include alternative forms of discipline to physical punishment.

**R20.** That Canada collaborate on initiatives with Aboriginal organizations to examine quality research and partnership contributions exploring the relationship between systemic factors, abuse and neglect and Aboriginal children's placement in alternative care. This research, along with partnership contributions, should inform practice and policy decision-making about how to reduce the numbers of Aboriginal children in alternative care while facilitating the realization of their rights.

## 6. Disability, basic health and welfare (arts. 6, 18, 23, 24, 26, 27, 33)

### 6.1 Health and health services

The Committee's General Comment 11 guidance on health and indigenous children is relevant to the lives of Aboriginal children in Canada.

States parties shall ensure that all children enjoy the highest attainable standard of health and have access to health-care service. Indigenous children frequently suffer poorer health than non-indigenous children due to inter alia inferior or inaccessible health services... (para 49).

The Committee urges States parties to take **special measures** [author emphasis] to ensure that indigenous children are not discriminated against enjoying the highest attainable standard of health. The Committee is concerned over the high rates of mortality among indigenous children... (para 50).

States parties should take the necessary steps to ensure ease of access to health-care services for indigenous children. Health services should...be community based and planned and administered in cooperation with the peoples concerned.<sup>53</sup> Special consideration should be given to ensure that health-care services are culturally sensitive... Particular attention should be given to ensuring access to health care for indigenous peoples who reside in rural and remote areas or...who are migrant workers, refugees or displaced. States parties should furthermore pay special attention to the needs of indigenous children with disabilities...<sup>54</sup> (para 51).

States should take all reasonable measures to ensure that indigenous children, families and their communities receive information and education on issues relating to health and preventive care... (para 53) ...In certain States parties suicide rates for indigenous children are significantly higher than for non-indigenous children. Under such circumstances, States parties should design and implement a policy for preventive measures and ensure that additional financial and human resources are allocated to mental health care for indigenous children in a culturally appropriate manner, following consultation with the affected community...(para 55).

The Committee's 2003 Concluding Observations identified several concerns specific to: the unequal access and lack of universality to a high standard of healthcare by Aboriginal children; sudden infant death syndrome; fetal alcohol spectrum disorder; high mortality rates; high rate of suicide; and high rate of substance abuse among Aboriginal children.

<sup>53</sup> ILO Convention 169, article 25 (1, 2).

<sup>54</sup> CRC, General Comment 9 on The Rights of Children with Disabilities, 2006.

The Committee is encouraged by the commitment of the Government to strengthening health care for Canadians by, inter alia, increasing the budget and focusing on Aboriginal health programmes. However, the Committee is concerned at the fact, acknowledged by the State party, that the relatively high standard of health is not shared equally by all Canadians. It notes that equal provincial and territorial compliance is a matter of concern, in particular as regards universality and accessibility in rural and northern communities and for children in Aboriginal communities. The Committee is particularly concerned at the disproportionately high prevalence of sudden infant death syndrome and foetal alcohol syndrome disorder among Aboriginal children (para 34).

The Committee recommends that the State party undertake measures to ensure that all children enjoy equally the same quality of health services, with special attention to indigenous children and children in rural and remote areas (para 35).

The Committee is encouraged by the average decline in infant mortality rates in the State party, but is deeply concerned at the high mortality rate among the Aboriginal population and the high rate of suicide and substance abuse among youth belonging to this group( para 36). ...The Committee suggests that the State party continue to give priority to studying possible causes of youth suicide and the characteristics of those who appear to be most at risk, and take steps as soon as practicable to put in place additional support, prevention and intervention programmes, e.g. in the fields of mental health, education and employment, that could reduce the occurrence of this tragic phenomenon (para 37).

We note that the report *A Canada Fit for Children* (2004) stated that 'adverse health issues disproportionately impact Aboriginal children and their families...' (para. 108)<sup>55</sup>, an observation that committed Canada to reducing the gap in health status between Aboriginal and non Aboriginal children.

...We will work toward improving access to health services and delivering them in a more seamless way... We will engage Aboriginal communities in their design and delivery so that they combine the best of both western and indigenous traditions. We will recognize the importance of traditional/country foods and traditional medicine to the health and well-being of Aboriginal peoples. We will also improve supports for parents, families and communities, increasing awareness of healthy pregnancies, as well as child health (para 109).

...We in Canada will create and maintain the conditions that promote the mental health of children, young people and their families, and will strive to prevent or minimize the adverse consequences of emotional problems and mental illness. Depression in children is a growing concern. The suicide of young people, which is occurring too frequently in both Aboriginal and non-Aboriginal communities, is the ultimate tragedy; every effort must be made to prevent it (para 95).

<sup>55</sup> Available at: <http://www.hrsdc.gc.ca/eng/cs/sp/sdc/socpol/publications/2002-002483/page01.shtml>

Canada's 2009 report refers to various initiatives in place, such as the First Nations and Inuit Child Care Initiative; the Federal Strategy on Early Childhood Development for First Nations and other Aboriginal children; Aboriginal Head Start On Reserve; and Aboriginal Head Start Urban and Northern Communities (AHSUNC). The report does not identify whether improvements have resulted from these initiatives or whether the 2004 report objectives were met and we are not aware of any systemic, evidence-based monitoring in place today that will provide such information. So while the 2009 report refers to various funding and health care programs instituted by Canada, the absence of evaluative reporting, based on disaggregated data analysis, makes it difficult for Canadians and the Committee to determine whether program objectives have been met and Aboriginal children's lives improved.

There is evidence to indicate, however, that while some Aboriginal children are healthier today, as a group Aboriginal children continue to lag behind non-Aboriginal children in Canada. In our opinion, Canada's report does not portray the actual poor state of Aboriginal children's health.

In fact, in almost all health status indicators (measures of child health, such as diabetes and suicide rates) and in the determinants of health and well-being (influences such as poverty and access to clean water), Aboriginal children fall well below the national averages for Canadian children. Twenty years after the Convention on the Rights of the Child was adopted with the promise of providing the best we have to give as a nation for all our children, the health conditions of Canada's Aboriginal children are not what we would expect in one of the most affluent countries in the world. Such disparity is one of the most significant children's rights challenges Canada must address.<sup>56</sup>

Socio-economic, environmental and historical factors have led to health inequities for Aboriginal children and poor outcomes, in general, as compared to non-Aboriginal children. Substandard housing, poverty and low educational attainments are associated directly with Aboriginal children's poor health. A third of Aboriginal children live in low-income families where access to food is a concern,<sup>57</sup> which has led to poor nutrition and preventable chronic health conditions.

As a result, [Aboriginal children] experience higher infant mortality rates, lower child immunization rates, poorer nutritional status and endemic rates of obesity, diabetes and other chronic diseases. Aboriginal people also suffer higher rates of suicide, depression, substance abuse and fetal alcohol spectrum disorder, and their representation in the welfare and justice systems is generally higher than in the non-Aboriginal population.<sup>58</sup>

<sup>56</sup> UNICEF (2009). *Canadian Supplement to the State of the World's Children. Aboriginal children's health: Leaving no child behind*, pg. 5.

<sup>57</sup> See Smyie, J.; Adomake, P. (ed.)(2009). *Indigenous Children's Health Report: Health Assessment in Action*. Available at: [http://www.stmichaelshospital.com/pdf/crich/ichr\\_report.pdf](http://www.stmichaelshospital.com/pdf/crich/ichr_report.pdf) 3

<sup>58</sup> Op. cit., p.2.

Geographical inaccessibility, cultural insensitivities and language barriers compound these factors.<sup>59</sup> Health Canada estimates that nine in every 1000 infants are born with fetal alcohol spectrum disorder ('FASD')<sup>60</sup> while research shows that occurrence of FASD is significantly higher among Aboriginal populations.<sup>61</sup> Aboriginal children have a much higher risk than non-Aboriginal children for contracting obesity, respiratory illnesses and diabetes. Children with urban access to primary, secondary and tertiary public health care supports tend to fare better than Aboriginal children in rural communities and living on reserves. While some improvements have been made in some regions of Canada, in our experience progress has been limited. There remains inconsistent access to primary health care, preventive health care and support for children with special needs such as developmental disabilities. Within this context, we ask the Committee to request that Canada adopt special measures to improve health services substantially for Aboriginal children.

**Recommendations:**

- R21.** That Canada provide more community-based, culturally appropriate and properly funded health services in Aboriginal communities to address critical health issues among Aboriginal children and to ensure that Aboriginal children have access to the same standard of health care as other Canadian children.
- R22.** That Canada promote accountable, coordinated partnerships among federal, provincial, territorial and Aboriginal bodies responsible for Aboriginal health care and ensure that those partnerships address key issues related to funding, service delivery, infrastructure and equal access to quality health care.
- R23.** That Canada adopt monitoring and evaluative strategies in association with their health initiatives to encourage better policy decision-making and more accurate reporting about outcomes in Aboriginal child health. Independent researchers specializing in Aboriginal child health should lead on these strategies.
- R24.** That Canada improve its investment in health infrastructure within remote communities by promoting initiatives, such as video links, that make quality health care more accessible within those communities.
- R25.** That Canada provide educational incentives to encourage Aboriginal youth, and adults, to train in health related fields and work in Aboriginal communities.

<sup>59</sup> Available at: <http://www.phac-aspc.gc.ca/publicat/2008/cpho-aspc/pdf/cpho-report-eng.pdf> 3

<sup>60</sup> Available at: [http://www.mcf.gov.bc.ca/fasd/pdf/Factsheet\\_FASD\\_Feb\\_2009.pdf](http://www.mcf.gov.bc.ca/fasd/pdf/Factsheet_FASD_Feb_2009.pdf)

<sup>61</sup> Available at: <http://www.hc-sc.gc.ca/hl-vs/iyh-vsv/diseases-maladies/fasd-etcaf-eng.php>

## 6.2 Poverty

In its General Comment 11, the '[t]he Committee notes with concern that disproportionately high numbers of indigenous children live in extreme poverty, a condition which has a negative impact on their survival and development' (para. 34). The Committee also expressed concern in this General Comment about high infant/child mortality rates, malnutrition and diseases.

The Committee stresses the need for States parties to take **special measures** [author emphasis] to ensure that indigenous children enjoy the right to an adequate standard of living and that these, together with progress indicators, be developed in partnership with indigenous peoples, including children (para 34).

The Committee in its 2003 Concluding Observations urged Canada to implement a national strategy to reduce homelessness and poverty.

The Committee recommends that the State party continue to address the factors responsible for the increasing number of children living in poverty and that it develop programmes and policies to ensure that all families have adequate resources and facilities, paying due attention to the situation of single mothers, as suggested by CEDAW (A/52/38/Rev.1, para. 336), and other vulnerable groups (para 43).

The Committee, Canada and we agree that poverty among all children, including Aboriginal children, must end. We also concur that poverty is an underlying factor diminishing the realization of children's rights and increasing their vulnerability in their everyday worlds. While we are united in our belief that child and family poverty must be eliminated, at the same time we are concerned about the current state of poverty among Aboriginal children and its resulting inequities for those children. Despite the Committee's recommendations and Canada's initiatives, for example, the incidence of severe economic hardship is dramatically higher for Aboriginal children and their families. Approximately one in four Aboriginal children live in poverty compared to one in ten children in Canada's larger population.<sup>62</sup>

- Nearly half (49%) off reserve First Nations children under the age of six live in low-income families, compared to 18% of non-Aboriginal children;
- 57% off reserve First Nations children living in large cities also live in low income families;
- Compared to off reserve First Nations children not living in low-income families, off reserve First Nations children living in low-income families are twice as likely to have parents or guardians dissatisfied with their finances and housing conditions.<sup>63</sup>

<sup>62</sup> Campaign 2000-2010 Canada Child Poverty Report Card. Available at: <http://www.campaign2000.ca/reportCards/national/2010EnglishC2000NationalRportCard.pdf>

<sup>63</sup> Statistics Canada (2006). *Aboriginal peoples in Canada in 2006: Inuit, Métis and First Nations, 2006 Census*. Ottawa: Statistics Canada.

The Assembly of First Nations describes the poverty experienced by Aboriginal peoples as 'the single greatest social injustice facing Canada.'<sup>64</sup> While Canada's child poverty rate is higher than many similarly developed countries<sup>65</sup>, Aboriginal children disproportionately experience its impacts. Aboriginal children live in substandard housing that is characterized by 'crowding, need for repairs and poor water quality.'<sup>66</sup> Some researchers view poverty as a 'contemporary legacy of colonization that undermines the ability of Aboriginal families to nurture and support their children.'<sup>67</sup> The pervasiveness of poverty and its systemic impact has aptly been described as an 'insidious poverty epidemic.'<sup>68</sup> Aboriginal children in Canada have inadequate opportunities to exit the cycle of poverty.

Pursuant to articles 26 and 27 of the Convention on the Rights of the Child, the Committee recommends that the federal government develop a federal strategy to combat child poverty that should be put into effect as soon as possible, accompanied by clear goals and timetables. Among other things, such a plan should include preventative measures aimed at high-risk families and a comprehensive housing strategy.<sup>69</sup>

In 2007, the Senate Committee's Report called for a national poverty reduction strategy. We observe that the British Government has enacted a *Child Poverty Act* and published the Britain's first ever child poverty strategy. The strategy sets out how Britain will achieve the target of eradicating child poverty by 2020. While Canada has engaged in consultations and produced reports on poverty, and several provinces/territories have poverty strategies, no national poverty strategy has emerged despite pressure from government affiliations, civil society and non-government organizations to do so. In 2011 a Member of Parliament in Canada introduced a private member's bill for poverty elimination, however, it has not been passed and child poverty was not specifically identified as a critical national issue. We ask the Committee to request that Canada develop and implement a national child poverty strategy, targeting vulnerable groups such as Aboriginal children, and coordinating with child poverty strategies with the provinces and territories.<sup>70</sup>

**Recommendation:**

**R26.** That the future federal Children's Commissioner has a mandate to assume an advisory and monitoring role regarding a coordinated provincial, territorial and federal plan for addressing child poverty, particularly among vulnerable groups such as Aboriginal children.

<sup>64</sup> Available at: <http://www.afn.ca/article.asp?id=3635>

<sup>65</sup> Available at: <http://www.phac-aspc.gc.ca/publicat/2008/cpho-aspc/pdf/cpho-report-eng.pdf>

<sup>66</sup> Available at: [http://www.stmichaelshospital.com/pdf/crich/ichr\\_report.pdf](http://www.stmichaelshospital.com/pdf/crich/ichr_report.pdf) 3

<sup>67</sup> Available at: <http://www.fnfcfs.com>

<sup>68</sup> Available at: [http://www.fnfcfs.com/pubs/vol3num3/Editorial\\_pp5.pdf](http://www.fnfcfs.com/pubs/vol3num3/Editorial_pp5.pdf)

<sup>69</sup> Standing Committee, 2007, Recommendation 14.

<sup>70</sup> See BC Representative for Children and Youth (2011). *Fragile Lives, Fragmented Systems: Strengthening Supports for Vulnerable Infants*. Available at: <http://www.rcybc.ca>

## 7. Education, leisure and cultural activities (arts. 28, 29, 30, 31)

The Committee's General Comment 1 on education states:

...The aims of education that [CRC article 29] sets out...promote, support and protect the core value of the Convention: the human dignity innate in every child and his or her equal and inalienable rights. These aims...are all linked directly to the realization of the child's human dignity and rights, taking into account the child's special developmental needs and diverse evolving capacities...(para 1).

Article 29 (1)... also insists upon the need for education to be child-centred, child-friendly and empowering, and it highlights the need for educational processes to be based upon the very principles it enunciates.<sup>1</sup> The education to which every child has a right is one designed to provide the child with life skills, to strengthen the child's capacity to enjoy the full range of human rights and to promote a culture which is infused by appropriate human rights values. The goal is to empower the child by developing his or her skills, learning and other capacities, human dignity, self-esteem and self-confidence... (para 2).

In addition to the Committee's comments on discrimination and indigenous children, the Committee also has stated in General Comment 11 that:

... Quality education enables indigenous children to exercise and enjoy economic, social and cultural rights... Furthermore, it strengthens children's ability to exercise their civil rights in order to influence political policy processes for improved protection of human rights. Thus, the implementation of the right to education of indigenous children is an essential means of achieving individual empowerment and self-determination of indigenous peoples (para 57).

In order for indigenous children to enjoy their right to education on equal footing with nonindigenous children, States parties should... allocate targeted financial, material and human resources in order to implement policies and programmes which specifically seek to improve the access to education for indigenous children. ...[E]ducation programmes and services should be developed and implemented in cooperation with the peoples concerned to address their specific needs. Furthermore, governments should recognize the right of indigenous peoples to establish their own educational institutions and facilities, provided that such institutions meet minimum standards established by the competent authority in consultation with these peoples<sup>71</sup> (para 60).

<sup>71</sup> ILO Convention No. 169, article 27.

States parties should ensure that school facilities are easily accessible where indigenous children live...(para 61) ....[E]ducation in the child's own language is essential...(para 62) ....[T]he Committee notes the many positive benefits of participation in sports, traditional games, physical education, and recreational activities and calls on States parties to ensure that indigenous children enjoy the effective exercise of these rights (para 63).

In its 2003 Concluding Observations, the Committee expressed concern about the reduction in education spending; increasing student-teacher ratios; the reduction in school boards; the high dropout rate of Aboriginal children; and the availability of instruction in both official languages only 'where numbers warrant' (para 44). The Committee recommended that Canada improve its education quality and accessibility. In response, Canada's 2009 report identifies its initiatives to improve educational outcomes for Aboriginal children on reserve and the support it has given to '... community-based, linguistically and culturally appropriate education programming for vulnerable children, including Métis, Inuit and off-reserve First Nations children and the children of recent immigrants and refugees' (para. 92).

While these initiatives represent important contributions to Aboriginal children's education, it is essential to monitor and evaluate these initiatives to determine their effectiveness in reducing high school dropout rates among Aboriginal children. At present, evidence suggests that the educational achievement of Aboriginal children on key measures like readiness to learn, progress in school and high school graduation rates dramatically lags behind other Canadian children. Closing the gap in high school graduation rates is seen as a critical component to address the economic and social challenges of the Aboriginal population.

In 2006, 34% of Aboriginal persons aged 25 to 64 years had not completed high school, while 21% of Aboriginal persons aged 25 to 64 years listed a high school diploma as their highest education qualification.<sup>72</sup> In 2006, the proportion of the Aboriginal population aged 25 to 64 years without a high school diploma (34%) was 19% higher than the proportion of the non-Aboriginal population of the same age group (15%).<sup>73</sup> Opportunities are limited for Aboriginal children, such as those living in rural communities and on reserves, to participate in recreation activities and sports. Poverty, poor facilities and the absence of a national Aboriginal sport and recreation policy pose barriers for these children who require access to healthy living initiatives equal to other Canadian children.

Historic trends in education demonstrate that, with some exceptions, consistently poor outcomes have not been addressed through innovation, attention to these outcomes or measures to support achievement over the past few decades. Education, like child welfare, is a provincial area of responsibility in Canada, although Canada retains responsibility in areas where transfer agreements

<sup>72</sup> Statistics Canada (2006). *Aboriginal peoples in Canada in 2006: Inuit, Métis and First Nations, 2006 Census*. Ottawa: Statistics Canada.

<sup>73</sup> Available at: [http://www4.hrsdc.gc.ca/3ndic.1t.4r@-eng.jsp?iid=29#M\\_4](http://www4.hrsdc.gc.ca/3ndic.1t.4r@-eng.jsp?iid=29#M_4)

are not in place with provinces. Education policy to support better achievements for Aboriginal children is patchwork and inconsistent. We are encouraged to see, however, that the Assembly of First Nations and Canada's Aboriginal Affairs and Northern Development ministry recently announced a joint action plan to improve the lives of First Nation peoples in Canada.<sup>74</sup> The joint action plan makes education about First Nations peoples a priority to address along with other key priority areas. This is an important step forward and one that will hopefully inspire other Aboriginal communities and governments in Canada to work together to better improve education experiences and outcomes for all Aboriginal children.

A consistent approach to improvement, with a strong emphasis on educational attainment in all regions, is crucial to closing educational gaps so Aboriginal children realize their right to quality education. Preserving the cultural identity of Aboriginal children, including their language, within this context must also be an important consideration along with human rights education for all children, including Aboriginal children residing in areas subject to federal jurisdiction. To facilitate the realization of Aboriginal children's entitlements under the CRC, we ask that the Committee urge Canada to develop and implement a national framework on education for Aboriginal children.

**Recommendation:**

**R27.** That Canada, together with Aboriginal representatives and the provinces/territories, develop and implement a national framework on education for all Aboriginal children residing in areas subject to federal jurisdiction. This national framework needs to take account of localized and regional considerations.

<sup>74</sup> Available at: <http://www.aadnc-aandc.gc.ca/eng/1314718067733>

## 8. Special protection measures (arts 22, 30, 32–36, 37, 38, 39, 40)

### 8.1 Homeless, trafficked and sexually exploited children

In its 2003 Concluding Observations, the Committee expressed concern about homeless, sexually exploited and trafficked children, too many of whom are Aboriginal.

The Committee notes...concerns relating to the vulnerability of street children and, in particular, Aboriginal children who, in disproportionate numbers, end up in the sex trade as a means of survival (para 52).

The Committee recommends that the State party further increase the protection and assistance provided to victims of sexual exploitation and trafficking, including prevention measures, social reintegration, access to health care and psychological assistance, in a culturally appropriate and coordinated manner, including by enhancing cooperation with non-governmental organizations and the countries of origin (para 53).

The Committee regrets the lack of information on street children in the State party's report, although a certain number of children are living in the street. Its concern is accentuated by statistics from major urban centres indicating that children represent a substantial portion of Canada's homeless population, that **Aboriginal children are highly overrepresented** [author emphasis] in this group, and that the causes of this phenomenon include poverty, abusive family situations and neglectful parents (para 54).

The Committee recommends that the State party undertake a study to assess the scope and the causes of the phenomenon of homeless children and consider establishing a comprehensive strategy to address their needs, paying particular attention to the most vulnerable groups, with the aim of preventing and reducing this phenomenon in the best interest of these children and with their participation (para 55).

Canada's 2009 report referred to expenditures intended to reduce homelessness in Canada, including among children, and research priorities given to families with children under the Homelessness Knowledge Development Program. As the 2009 report indicated, significant findings in research identify the relationships between homelessness and family violence, child abuse and sexual exploitation. Within this context, we continue to share the Committee's concerns about the high incidence of homeless and sexually exploited children, which include a high percentage of Aboriginal children. We would like to draw attention, as well, to the relationship among homeless, sexually exploited and trafficked children.

Canada's first report (2007) on the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography<sup>75</sup> indicates that 'Canada's Criminal Code provides comprehensive protections against all forms of sexual abuse and exploitation of children' (para. 2), protecting against offences that include sexual assault, sexual exploitation and using the Internet to lure children for sexual and/or abduction reasons. Canada's criminal laws also prohibit trafficking in persons for exploitative reasons. Bill C-268, passed by Parliament in 2010 as an amendment to the Criminal Code, requires minimum mandatory sentences for those persons convicted of child trafficking. It is critical that adequate resources are provided to ensure charges are laid, convictions obtained and appropriate sentences given to persons guilty of offences under this legislation. Resources should also be designated for holistic services for child victims within this context.

Supported by research, we've learned that the adverse childhood experiences of many Aboriginal children place them at high risk for exploitation, homelessness and trafficking although in one province, British Columbia, it has been difficult to determine how many Aboriginal children are sexually exploited, for example, with estimates ranging from 14% to 60%.<sup>76</sup> The Red Cross has cautioned:

Intervention strategies and policy initiatives over the last 25 years have not helped in reducing the numbers, and there is a strong consensus across a broad spectrum of service providers and professional groups that the present situation cannot continue without serious consequences for both Aboriginal youth and Canadian society.<sup>77</sup>

Aboriginal childhood experiences are linked to the experiences of Aboriginal women who are sexually exploited, trafficked, subjected to violence and unexplained disappearances. Campaigns have been launched to locate missing or murdered Aboriginal women. Many Aboriginal women in the sex trade, and who were victims of violence or homicide, were formerly children living in alternative care. There are inadequate statistics about these women, however, and about how many male Aboriginal children share those experiences, although there are indications that the numbers are higher than what they appear. We ask the Committee to request that Canada respond to its 2003 recommendation regarding this particularly vulnerable group of children.

Trafficking within Canada's borders, particularly of children, is an issue that requires urgent attention. While we don't know the full extent of human trafficking within and across provincial jurisdictions, there is evidence to suggest it is a significant problem that must be made a national priority to combat. Social media, popular among children, has a growing and alarming association with trafficked and sexually exploited children. Social media has made it possible for offenders to target vulnerable

<sup>75</sup> Available at: <http://www.pch.gc.ca/ddp-hrd/docs/2009-01/index-eng.cfm>

<sup>76</sup> Available at: <http://www.bcmj.org/commercial-sexual-exploitation-children-and-youth#Characteristics%20of%20children%20in%20the%20sex%20trade>

<sup>77</sup> Available at: <http://www.redcross.ca/article.asp?id=29873&tid=001>

children, such as Aboriginal children in remote communities, and lure them to areas where they are harmed and exploited. Aboriginal children are being trafficked within provinces and across provincial jurisdictions. Root causes of homelessness, vulnerability to trafficking and sexual exploitation can be associated with such factors as colonization and residential schools; poverty; substance abuse; isolation; racism; abuse and neglect; and inadequate services.

While individual jurisdictions within Canada have created services to be responsive to this group of children and adults, more funding and programs are needed. We note that Canada has ratified the *UN Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography* and the *UN Convention against Transnational Organized Crime and its Protocol to Prevent, Suppress and Punish Trafficking* Committee ask Canada to fully implement these protocols. Canada could begin by reviewing its legislation for compliance with these protocols while encouraging the provinces/territories to take the same approach. We also request that the Committee urge Canada to establish a national commission; target funding for programs that promote internet safety; and ensure that holistic services exist for child victims.

**Recommendations:**

- R28.** That Canada immediately establish a national commission to examine child trafficking, sexual exploitation and homelessness and their interconnectedness with other issues such as violence and child abuse. The national commission's work could lead to a national centre with responsibility for addressing these issues.
- R29.** That Canada provide targeted funding for programs that promote internet safety among children and adults with responsibilities for children.
- R30.** That Canada, provinces, territories and Aboriginal communities, through their collaborative work, promote the development and implementation of holistic services for child victims of trafficking, sexual exploitation, homelessness and related issues through funding initiatives.
- R31.** That Canada fully implement the provisions within the *UN Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography* and the *UN Convention against Transnational Organized Crime and its Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children* (Trafficking Protocol).
- R32.** That Canada review its legislation, along with the provinces/territories, for compliance with the *UN Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography* and the *UN Convention against Transnational Organized Crime and its Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children* (Trafficking Protocol).

## 8.2 Refugee, separated and unaccompanied children

The Committee's General Comment 6 identifies the multi-dimensional challenges facing States, including Canada, in responding to this vulnerable group of children, who may include indigenous children.

The objective of this general comment is to draw attention to the particularly vulnerable situation of unaccompanied and separated children; to outline the multifaceted challenges faced by States and other actors in ensuring that such children are able to access and enjoy their rights; and, to provide guidance on the protection, care and proper treatment of unaccompanied and separated children based on the entire legal framework provided by the Convention on the Rights of the Child (the "Convention"), with particular reference to the principles of non-discrimination, the best interests of the child and the right of the child to express his or her views freely (para 1).

In its 2003 Concluding Observations, the Committee noted the best interests principle incorporation into *Canada's Immigration and Refugee Protection Act (2002)*. The Committee also identified, however, that previous concerns were not addressed adequately, making particular reference to family reunification, deportation and deprivation of liberty. Specifically, the Committee noted the absence of:

- (a) A national policy on unaccompanied asylum-seeking children;
- (b) Standard procedures for the appointment of legal guardians for these children;
- (c) A definition of "separated child" and a lack of reliable data on asylum-seeking children;
- (d) Adequate training and a consistent approach by the federal authorities in referring vulnerable children to welfare authorities (para 46).

The Committee made specific recommendations to Canada regarding a national policy; appointment of guardians; detainment; returning children to their countries of origin; access to health and education services; non-discrimination in benefit entitlements; and family unification. In response, Canada's 2009 report referred to initiatives that included a 'guardianship protocol' and an updated manual for processing refugee claims that identified age and gender sensitive protocols. According to the report, alternatives to detention of these children needed to be considered 'with significant weight given to best interests' and oversight through child welfare agencies. The report stated that children must also have the opportunity to express their views about arrangements made for them.

The *Immigration and Refugee Protection Act*, along with Canada's Criminal Code, acknowledges human trafficking as a serious component of some children's experiences requiring that their best interests, along with other factors, are preeminent in all immigration decision-making. While evidence exists to indicate that Canadian Aboriginal children are trafficked within our borders, refugee, separated and unaccompanied children may also be trafficked within our borders upon their arrival in Canada. In that way, they share common experiences with Aboriginal and other Canadian children

and their lives may intersect at various times. Refugee, separated and unaccompanied children may include indigenous children from countries outside Canada, illustrating the wide and complex nature of defining 'indigenous' children. All these issues and whether Aboriginal and other Canadian children are leaving Canada as trafficked children require further research, particularly research that explores children's experiences from their perspectives.

From available evidence, however, it does appear that implementation of initiatives intended to be responsive to refugee, unaccompanied and separated children has been problematic despite Canada's observation in 2007 that '...growing numbers of children are arriving alone or without legal guardianship to claim refugee status.'<sup>78</sup> Some concerns identified are that:

- persons assigned as designated representatives do not fully address children's guardianship needs;
- the best interests principle is not properly embedded in legislation, interpreted and applied uniformly;
- variations exist among the provinces/territories as to child protection given (with implications for legal guardianship, citizenship and social assistance when children are under 18 years of age);
- trafficked and sexually exploited children are among refugee, unaccompanied and separated children;
- these children risk ongoing sexual and other forms of exploitation within Canadian borders;
- children's detention remains as problematic and is not always a 'measure of last resort' in accordance with CRC principles and Canadian legislation;
- children are separated from their refugee and sometimes detained parents.<sup>79</sup>

Inadequacies in legislation and regulations continue to negatively affect children's experiences and Canada continues to fail '...to meet its obligations for timely family reunification, delays in and barriers to family reunification continue to be a major problem...'<sup>80</sup> Specialized child rights organizations have engaged in significant collaborative work to address issues affecting these children. We ask that the Committee encourage Canada to adopt the *Best Practice Statement: Separated Children in Canada*<sup>81</sup> as guidance for how Canada can meet its CRC and other obligations to this group of children. We also request that the Committee ask Canada to review and amend legislation, regulations and practices specific to refugee, unaccompanied and separated children.

<sup>78</sup> Available at: <http://www.parl.gc.ca/content/LOP/ResearchPublications/prb0715-e.htm>

<sup>79</sup> See UN Refugee Agency, Canada <http://www.unhcr.ca/>; Canadian Council for Refugees <http://ccrweb.ca/>; International Bureau for Children's Rights [http://www.ibcr.org/eng/thematic\\_reports.html](http://www.ibcr.org/eng/thematic_reports.html)

<sup>80</sup> Available at: <http://ccrweb.ca/>

<sup>81</sup> Available at: [http://www.ibcr.org/eng/separated\\_children\\_ibcr\\_initiatives.html](http://www.ibcr.org/eng/separated_children_ibcr_initiatives.html)

**Recommendations:**

- R33.** That Canada utilize the *Best Practice Statement: Separated Children in Canada* to meet its CRC obligations to refugee, unaccompanied and separated children.
- R34.** That Canada review and amend, where necessary, its legislation, regulations and practices related to refugee, unaccompanied and separated children to ensure full compliance with its CRC obligations.

### 8.3 Youth justice

The Committee's General Comment 10 on youth justice states:

... it is also clear that many States parties still have a long way to go in achieving full compliance with CRC, e.g. in the areas of procedural rights, the development and implementation of measures for dealing with children in conflict with the law without resorting to judicial proceedings, and the use of deprivation of liberty only as a measure of last resort (para 1).

...This juvenile justice [one that complies with CRC principles], which should promote, inter alia, the use of alternative measures such as diversion and restorative justice, will provide States parties with possibilities to respond to children in conflict with the law in an effective manner serving not only the best interests of these children, but also the short and long-term interest of the society at large (para 3).

The Committee's General Comment 10 refers to the need to integrate juvenile justice policy with the CRC and other international standards, such as the *United Nations Standard Minimum Rules for the Administration of Juvenile Justice* (Beijing Rules); the *United Nations Rules for the Protection of Juveniles Deprived of their Liberty* (Havana Rules); and the *United Nations Guidelines for the Prevention of Juvenile Delinquency* (Riyadh Guidelines). General Comment 10 makes specific reference to primary principles needed to inform juvenile justice policy, including: non-discrimination (article 2); best interest (article 3); right to life, survival and development (article 6); the right to be heard (article 12); and dignity (article 40(1)).

In addition, the Committee's General Comment 11 on indigenous children states:

States parties are encouraged to take all appropriate measures to support indigenous peoples to design and implement traditional restorative justice systems as long as those programmes are in accordance with the rights set out in the Convention, notably with the best interests of the child.<sup>82</sup> The Committee draws the attention of States parties to the *United Nations Guidelines for the*

<sup>82</sup> Recommendations of Day of General Discussion on the Rights of Indigenous Children, 2003, para. 13.

*Prevention of Juvenile Delinquency*, which encourage the development of community programmes for the prevention of juvenile delinquency.<sup>83</sup> States parties should seek to support, in consultation with indigenous peoples, the development of community-based policies, programmes and services which consider the needs and culture of indigenous children, their families and communities. States should provide adequate resources to juvenile justice systems, including those developed and implemented by indigenous peoples (para 75).

States parties are reminded that pursuant to article 12 of the Convention, all children should have an opportunity to be heard in any judicial or criminal proceedings affecting them, either directly or through a representative. In the case of indigenous children, States parties should adopt measures to ensure that an interpreter is provided free of charge if required and that the child is guaranteed legal assistance, in a culturally sensitive manner (para 76).

In its 2003 Concluding Observations, the Committee expressed concern about the '...extent of violence against and deaths in custody of Aboriginals...' (para 21).

The Committee is encouraged by the enactment of new legislation in April 2003. The Committee welcomes crime prevention initiatives and alternatives to judicial procedures. However, the Committee is concerned at the expanded use of adult sentences for children as young as 14; that the number of youths in custody is among the highest in the industrialized world; that keeping juvenile and adult offenders together in detention facilities continues to be legal; that public access to juvenile records is permitted and that the identity of young offenders can be made public. In addition, the public perceptions about youth crime are said to be inaccurate and based on media stereotypes (para 56).

The Committee recommends that the State party continue its efforts to establish a system of juvenile justice that fully integrates into its legislation, policies and practice the provisions and principles of the Convention, in particular articles 3, 37, 40 and 39, and other relevant international standards in this area, such as the *United Nations Standard Minimum Rules for the Administration of Juvenile Justice* (the Beijing Rules), the *United Nations Guidelines for the Prevention of Juvenile Delinquency* (the Riyadh Guidelines), the *United Nations Rules for the Protection of Juveniles Deprived of Their Liberty* and the *Vienna Guidelines for Action on Children in the Criminal Justice System*. In particular, the Committee urges the State party:

- (a) To ensure that no person under 18 is tried as an adult, irrespective of the circumstances or the gravity of his/her offence;
- (b) To ensure that the views of the children concerned are adequately heard and respected in all court cases;

<sup>83</sup> *United Nations Guidelines for the Prevention of Juvenile Delinquency*, "the Riyadh Guidelines", 1990.

- (c) To ensure that the privacy of all children in conflict with the law is fully protected in line with article 40, paragraph 2 (b) (vii) of the Convention;
- (d) To take the necessary measures (e.g. non-custodial alternatives and conditional release) to reduce considerably the number of children in detention and ensure that detention is only used as a measure of last resort and for the shortest possible period of time, and that children are always separated from adults in detention (para 57).

Canada's 2009 report makes reference to the *Youth Criminal Justice Act* (YCJA) and its comments in Canada's Fifth Report on the *International Covenant on Civil and Political Rights*. The 2009 report states that after the YCJA implementation in 2003, the statistics on youth sentenced to incarceration and criminal incident among youth showed a decline. And yet, Aboriginal children are significantly over-represented in the youth criminal justice system beginning at age 12 years. In Manitoba, for example, Aboriginal children represented 23% of the provincial population aged 12 to 17 in 2006, but 84% of children in sentenced custody.<sup>84</sup> For Aboriginal children in Canada in general, there is a greater likelihood of their involvement in the criminal justice system, including detention in a youth custody facility, than graduating from high school.<sup>85</sup>

Introduced in 2003, the current YCJA was designed to fix procedural flaws resulting from the application of the former *Young Offenders Act* (YOA). The new YCJA, influenced by court challenges and Canada's commitment to implement and uphold the CRC, was proclaimed at a time when Canada had the highest youth incarceration rate in the world. The YCJA recognizes 'protection of the public' and 'rehabilitation of youth' as interdependent pillars of the Canadian youth criminal justice system. It has been effective in diverting some children away from custodial environments,<sup>86</sup> reducing the child crime rate and reducing violent child crime.<sup>87</sup>

During 2007 to 2008, however, over 4,700 Aboriginal children were sentenced to custody and over 2,700 Aboriginal children were put on probation.<sup>88</sup> Since the implementation of the *Youth Criminal Justice Act* (YCJA), these figures have been increasing.<sup>89</sup> Aboriginal children continue to be overrepresented at various stages of the criminal justice process, which includes remand, admissions to secure and open custody and admissions to probation, as a consequence of systemic influences associated with poverty and other factors previously mentioned.<sup>90</sup> While we know that social supports

<sup>84</sup> Available at: <http://www.statcan.gc.ca/pub/85-002-x/2009002/article/10846/tbl/tbl08-eng.htm>

<sup>85</sup> BC Representative for Children and Youth; BC Office of the Provincial Health Officer (2009), Joint Special Report. *Kids, Crime, and Care: Health and Well-Being of Children in Care: Youth Justice Experiences and Outcomes*. Available at <http://rcybc.ca/content/publications/reports.asp>.

<sup>86</sup> Milligan, Shelly (2010). 'Youth court statistics 2008/2009', *Juristat*, Vol. 30, no. 2.

<sup>87</sup> 'Youth crime severity has generally been declining since 2001', Dauvergne, M.; Turner, J., 'Police- reported crime statistics in Canada, 2009'' *Juristat*, Summer 2010, Vol. 30, no. 2, pg 23.

<sup>88</sup> Available at: <http://www.statcan.gc.ca/pub/85-002-x/2009002/article/10846-eng.htm#a9>. Note: Probation totals exclude Prince Edward Island, Nova Scotia, Quebec, Northwest Territories and Nunavut; Remand totals exclude Prince Edward Island, Quebec, Saskatchewan and Nunavut, and Sentenced Custody totals exclude Prince Edward Island, Quebec and Nunavut.

<sup>89</sup> Available at: <http://www.statcan.gc.ca/pub/85-002-x/2009002/article/10846-eng.htm#a9>

<sup>90</sup> Available at: <http://www40.statcan.gc.ca/l01/cst01/legal42a-eng.htm>

and improved education contribute to lowering criminogenic risk factors early in life, there are no adequate and coordinated strategies within or across provincial or territorial jurisdictions to address elevated criminogenic and other risk factors for Aboriginal children.

In 2010, Canada introduced Bill C-4 as legislation to amend the current YCJA (and to make consequential and related amendments to other acts, also referred to as Sébastien's Law). The proposed changes towards a greater emphasis on detention, as proposed in Bill C-4, will potentially have a greater negative impact on Aboriginal children than on any other group in Canadian society.<sup>91</sup> Bill-C4 has become part of federal government omnibus crime Bill C-10 and we continue to have concerns about proposed amendments and the potentially negative legislative effects on Aboriginal children. Future youth justice policy and legislative initiatives should address the underlying root causes of criminal behaviour and recidivism rather than ignoring these causes.

In its current form, the YCJA can be used as a powerful instrument to avoid the criminalization of behaviour that would otherwise be treatable through concerted efforts outside of the justice system. This is particularly relevant for children who struggle with mental health issues or severe behavioural conduct disorder. Clinicians and other persons, such as those in the legal community, who work with Aboriginal children recognize this reality. In 2010, for example, the Council of the Canadian Bar Association passed a resolution underscoring how persons suffering from FASD live with neurological and behavioural challenges. The Association called for 'all levels of government to allocate additional resources for alternatives to the current practices of criminalizing individuals with FASD.'<sup>92</sup>

The YCJA principles need to be upheld and can be achieved if the Act is used as a tool, emphasizing its rehabilitative options, rather than an end in itself. Taking full advantage of YCJA's alternative measures can lead to a constructive and more treatment focused reintegration strategy for children. As the CRC clearly underscores the need to implement youth justice initiatives that are consistent with children's rights, we ask the Committee to request that Canada ensure full compliance with CRC provisions within this context. We request that the Committee recommend to Canada that it not amend the current YCJA as we believe those amendments will have a serious negative impact on outcomes for all children in conflict with the law and, in particular, Aboriginal children.

<sup>91</sup> Canadian Council of Provincial Child and Youth Advocates (2010). *Aboriginal Children and Youth in Canada: Canada Must Do Better*, (Position Paper).

<sup>92</sup> Council of the Canadian Bar Association, Resolution 10-02-A, August 2010.

**Recommendations:**

- R35.** That Canada fully implement the YCJA by providing the provinces and territories, which have administration responsibilities for the Act, with funding for non-custodial options in it.
- R36.** That Canada develop and implement a national multi-jurisdictional framework to address the rights of children with mental illnesses or severe behavioural and developmental disorders. Federal, provincial and territorial and Aboriginal representatives should develop this framework in collaboration with key partners, including researchers.
- R37.** That Canada reinforce the protection and rehabilitation of children as interdependent objectives, both of which are interrelated principles guiding decision-making under the YCJA.
- R38.** That Canada ensure that any future proposed changes to the Canadian youth criminal justice system comply with the provisions and the spirit of the CRC.

## 9. Special reservations; statement of understanding

### Special reservations

In its 2003 Concluding Observation, the Committee stated:

The Committee notes the efforts of the Government towards the removal of the reservation to article 37 (c) of the Convention, but regrets the rather slow process and regrets even more the statement made by the delegation that the State party does not intend to withdraw its reservation to article 21. The Committee reiterates its concern with respect to the reservations maintained by the State party to articles 21 and 37 (c) (para 6).

In light of the 1993 Vienna Declaration and Programme of Action, the Committee urges the State party to reconsider and expedite the withdrawal of the reservations made to the Convention. The Committee invites the State party to continue its dialogue with the Aboriginals with a view to the withdrawal of the reservation to article 21 of the Convention (2003 concluding observations) (para 7).

Based upon its 2009 report, Canada remains committed to upholding its reservations to articles 21 and 37(c).

#### Article 21

With a view to ensuring full respect for the purposes and intent of article 20 (3) and article 30 of the Convention, the Government of Canada reserves the right not to apply the provisions of article 21 to the extent that they may be inconsistent with customary forms of care among aboriginal peoples in Canada.

#### Article 37 (c)

The Government of Canada accepts the general principles of article 37 (c) of the Convention, but reserves the right not to detain children separately from adults where this is not appropriate or feasible.

We ask to Committee to encourage Canada to reconsider its reservation to article 37(c) within the context of its obligations as a signatory to the CRC and the legislative intent of the YCJA. We observe that the Preamble to the YCJA<sup>93</sup>, for example, specifically refers to Canada as a party to the CRC while Article 37(c) states that children who are deprived of their liberty 'shall be separated from adults unless it is considered in the child's best interest not to do so...save in exceptional circumstances'

<sup>93</sup> The Preamble reads in part: "WHEREAS Canada is a party to the United Nations Convention on the Rights of the Child and recognizes that young persons have rights and freedoms..."

Children's rights under the CRC, including their best interests, cannot be fully realized unless children are held separately from adults when incarcerated. The Committee's General Comment 10 on juvenile justice is explicit in its guidance to States, such as Canada, on this issue.<sup>94</sup>

Every child deprived of liberty shall be separated from adults. A child deprived of his/her liberty shall not be placed in an adult prison or other facility for adults. There is abundant evidence that the placement of children in adult prisons or jails compromises their basic safety, well-being, and their future ability to remain free of crime and to reintegrate. The permitted exception...should be interpreted narrowly; the child's best interests does not mean for the convenience of the States parties. States parties should establish separate facilities for children deprived of their liberty, which include distinct, childcentred staff, personnel, policies and practices (para. 85).

The Committee's General Comment 10 makes it clear that CRC principles, such as children's right to be treated with dignity; to have human rights reinforced; to receive treatment that promotes reintegration and takes account of their age and to be safe must apply to children in conflict with the law.

The protection of the best interests of the child means, for instance, that the traditional objectives of criminal justice, such as repression/retribution, must give way to rehabilitation and restorative justice objectives in dealing with child offenders. This can be done in concert with attention to effective public safety (para. 10).

We note, as well, that the *International Covenant on Civil and Political Rights*<sup>95</sup> states that '[a]ccused juvenile persons shall be separated from adults and brought as speedily as possible for adjudication' (article 10(b)). The removal of this reservation, therefore, must be done for Canada to be fully compliant with its international human rights obligations. Removal is also justified by the many reasons articulated in our report, including that there is an urgent need to address underlying systemic issues that lead Aboriginal children to their over representation in the youth justice system and, secondly, that many children in the youth justice system face mental and physical health challenges. We ask the Committee to urge Canada to remove this reservation.

**Recommendation:**

**R39.** That Canada remove its reservation to CRC article 37(c).

<sup>94</sup> Available at: <http://www2.ohchr.org/english/bodies/crc/comments.htm>

<sup>95</sup> Available at: <http://www2.ohchr.org/english/law/ccpr.htm>

### Statement of understanding

Canada registered a 'Statement of Understanding' with the Committee:

#### Article 30

It is the understanding of the Government of Canada that, in matters relating to aboriginal peoples of Canada, the fulfillment of its responsibilities under article 4 of the Convention must take into account the provisions of article 30. In particular, in assessing what measures are appropriate to implement the rights recognized in the Convention for aboriginal children, due regard must be paid to not denying their right, in community with other members of their group, to enjoy their own culture, to profess and practice their own religion and to use their own language.

We observe that Canada registered this Statement of Understanding prior to Canada's 2010 endorsement of the United Nations Declaration on the Rights of Indigenous Peoples. We ask that the Committee encourage Canada to engage in a national dialogue about this Declaration, its relationship to the CRC and how Aboriginal children's rights can be fully realized under these human rights instruments.

#### **Recommendation:**

**R40.** That Canada engage in a national dialogue about the Declaration on the Rights of Indigenous Peoples; its relationship to the CRC; and the implementation of Aboriginal children's rights under these two human rights instruments.

## 10. Conclusion

This Special Report has highlighted factors that combine with stigmatization and a legacy of colonialism to impede CRC implementation for Aboriginal children, including their right to be heard about matters important to them and to participate in finding solutions. Because Aboriginal children as a group are disadvantaged, the Committee has emphasized that States, such as Canada, must adopt 'special measures' to ensure that indigenous children's rights are fully realized. We believe that the situation facing Aboriginal children in Canada today – a matter of national importance – requires Canada to implement special measures for Aboriginal children on an urgent basis.

It is widely known and accepted that the circumstances in which people live significantly influence their physical and mental health outcomes. The social determinants of health – the circumstances in which people are born, grow up, live, work and age – are shaped by economics, social policies and politics.<sup>96</sup> Poverty and unemployment rates are extremely high among Aboriginal people. Housing situations for Aboriginal children and their families are often sub-standard with inadequate plumbing, water supplies and overcrowding. These factors, in turn, influence Aboriginal peoples' physical and mental health outcomes. Functional illiteracy; infant mortality rate; suicide; and drug and alcohol addiction is higher on average for Aboriginal people than for other Canadians.

Aboriginal children are a vital part of the social fabric of Canada. They are also among the most vulnerable populations of children with indicators showing that Aboriginal children are significantly disadvantaged as compared to their non-Aboriginal peers. Aboriginal children comprise an increasing proportion of all children in Canada<sup>97</sup>, but they also represent a population overrepresented in statistics that consistently show them experiencing poor outcomes. We know that poor outcomes for Aboriginal children in key domains such as health; education; justice; and child welfare is one of the largest national, provincial and territorial challenges faced by Canadian governments and society.

Canada is a signatory to the CRC and one of the most prosperous countries in the world. And yet, Aboriginal children living in Canada face a bleak reality and future. As a society, we continue to fail to meet our CRC obligations to these children. The information outlined in this report is not new. Despite spending millions of dollars each year, we see marginal, if any, improvement in the quality of Aboriginal children's lives. It is clear from the Committee's 2003 Concluding Observations to Canada that a federal state with a dualist constitutional structure is not an acceptable rationale for inequities experienced by disadvantaged children, such as our Aboriginal children. The federal government has responsibility to ensure full CRC implementation with the provinces and territories sharing in that responsibility.

<sup>96</sup> World Health Organization (2009). *Social Determinants of Health: Key Concepts*, 2009. Available at: [http://www.who.int/social\\_determinants/thecommission/finalreport/key\\_concepts/en/index.html](http://www.who.int/social_determinants/thecommission/finalreport/key_concepts/en/index.html)

<sup>97</sup> Available at: <http://www.statcan.gc.ca/pub/89-634-x/89-634-x2008001-eng.htm>

We recognize that issues facing Aboriginal children and their families are complex, made difficult by uncertainties regarding which level of government bears primary responsibility for services, resources and measuring for improvements for these children. At the same time, intergenerational disadvantages for Aboriginal peoples require significant government and political will to ensure that Aboriginal children have equal opportunities within Canada to realize fully their CRC entitlements. Improved strategies, leadership and coordinated efforts are required immediately within Canada. Aboriginal and non-Aboriginal organizations are working to address concerns about Aboriginal children's lives, offering a momentum for Canada to join and support.

The Truth and Reconciliation Commission for Aboriginal peoples makes it possible to look forward, with commitment and hope, to improved lives for Aboriginal peoples who have been deprived of equal opportunities. The Committee's current review of Canada's CRC implementation offers a complementary means to advance this agenda and to identify special measures that will ensure Aboriginal children realize their entitlements. It is our desire that the Committee's observations and recommendations, facilitated by contributions from Canada, non-government organizations and child advocates, such as the Council, will assist with articulating special measures for Canada to adopt and implement before its next review.

It is our shared common humanity, children and adults alike, that binds us and it is the realization of human rights that protects our agency. As advocates for children, we ask the Committee to call upon Canada and its provincial, territorial and Aboriginal representatives to take urgent and coordinated action through special measures designed to ensure that Aboriginal children, and all children, fully realize their rights under the CRC and other human rights instruments. By working together, we can make progress towards improving the quality of children's lives – today and in the future.

## Appendix A: Key Questions for Canada

The Committee, Canada and the Council agree that Aboriginal children are a vulnerable group of children who are not realizing their human rights under the CRC to the fullest extent possible. We fully support the Committee's guidance that special measures are required immediately to address critical issues facing these children; their families; their communities; and society in general. Canada, the provinces and territories, civil society and others must do better at recognizing and implementing the human rights of Aboriginal children and all children. We believe that it is incumbent upon Canada, as a signatory to the CRC, to improve its commitment to fulfilling its CRC obligations to Aboriginal, and all, children within our borders.

We ask, therefore, that the Committee address these key questions to Canada:

### All children:

1. Does Canada recognize, as many countries do, the key role of a federal children's commissioner and, if so, how will it proceed to recognize this role and within what time frame?
2. How will Canada implement children's participatory rights under the CRC and how will children's participation relate to CRC implementation in general?
3. What are Canada's future priorities for CRC implementation?

### Aboriginal children:

1. What does Canada identify as key human rights issues facing Aboriginal children today?
2. What are Canada's human rights priorities for Aboriginal children and what immediate steps will Canada take to address those priorities?
3. Will Canada address research challenges to informing central areas in Aboriginal children's lives – areas such as health, education, child welfare and justice? If so, in what ways and when?

## Appendix B: Summary of Recommendations for Canada

We provide this summary of our recommendations to assist the Committee in its review of Canada's implementation of the CRC.

In our report, and through our recommendations, we have identified CRC priorities for Aboriginal children and for other children who are not realizing their entitlements in Canada. Our recommendations intend to contribute to present and future CRC implementation within our borders.

We ask that the Committee consider these recommendations in its Concluding Observations to Canada and, if accepting them, request that Canada monitor the recommendations' implementation through periodic and systemic reviews. By doing so, it will be possible to evaluate whether we are meeting our CRC objectives and to make whatever changes are necessary to ensure full implementation of the CRC in Canada.

### General measures of implementation

- R1.** That Canada work with the provinces/territories over the next five years to:
- develop a rights-based lens for reviewing and amending legislation;
  - review, together with non-governmental child rights specialists, the extent to which CRC principles are reflected in legislation affecting children's lives;
  - amend legislation on a priority basis to ensure the CRC is embedded in legislation impacting children.
- R2.** That Canada develop and implement an Aboriginal children's national plan that is collaborative; informed by current and evolving research; properly funded; monitored for implementation and evaluated for outcomes against objectives. It is critical that this plan is linked to an Aboriginal child poverty reduction strategy with measurable outcomes.
- R3.** That Canada convene a special conference of federal/provincial/territorial representatives, with Aboriginal leaders and child delegates, to explore key issues specific to Aboriginal children. This conference could inform the national plan.
- R4.** That Canada facilitate the development, adoption and use of child impact assessments for proposed legislation, policies, programs and budgets affecting children's lives, making the results of these assessments publicly available.
- R5.** That Canada establish a federal Children's Commissioner role with a human rights mandate, consistent with the Paris Principles, and General Comment 2 and General Comment 5, to address significant issues affecting children's lives, including the lives of Aboriginal children. Canada should develop and implement this role in collaboration with children and adults working with and for children in key areas of children's lives.

- R6.** That Canada establish a federal Children's Commissioner role that ensures that children have access to justice, including access to effective non-judicial administrative mechanisms for hearing their concerns and providing remedies to human rights violations.
- R7.** That Canada make it a priority to improve its current analysis of budgetary decision-making and its impact on children, specifically in relation to vulnerable groups such as Aboriginal children.
- R8.** That Canada expand the areas currently reported upon; correlate this expansion with improved data collection methods; and adopt a budget accountability model that shows how many dollars are spent on children in key areas.
- R9.** That Canada utilize its improved budgetary analysis to inform, develop and implement a national children's budget with clearly targeted funding intended to improve children's lives. This budget development should be informed by consultations with individuals working with and for children and monitored and evaluated for budgetary effectiveness at strategic intervals.
- R10.** That Canada develop a national Aboriginal Children's Institute for Research, in collaboration with Aboriginal research organizations and initiatives, that:
- identifies key issues in Aboriginal children's lives;
  - examines, in collaborative partnerships, ways to improve research approaches;
  - identifies gaps in research;
  - leads on research initiatives informing these gaps while engaging in rigorous research practices;
  - utilizes a child impact assessment tool;
  - coordinates other research data and results specific to Aboriginal children;
  - provides information to Canada, and others, that assists with reporting to the Committee and with decision-making specific to Aboriginal children's lives;
  - provides information about good practices in Aboriginal research, including relevant ethical considerations.

### **General principles**

- R11.** That Canada and others responsible for implementing Aboriginal children's right to be free from discrimination ensure equality in funding, access to services and provision of services for all Aboriginal children requiring child welfare, health and education services.
- R12.** That Canada fully implement 'Jordan's Principle' and monitor its implementation.
- R13.** That Canada conduct a review of the 'best interests principle' in federal legislation concerning children, legal procedures in federal courts, judicial and administrative decisions, projects, policy, programs and services that have an impact on children.
- R14.** That Canada designates funding for educational child rights programs that include training, led by Aboriginal organizations, about the best interests principle and its practical application for families, communities and service providers who have responsibilities for Aboriginal children.
- R15.** That Canada, in collaborative partnerships, establish a national Aboriginal child participation initiative, with an emphasis on child rights education and the implementation of participatory rights so as to contribute to CRC overall implementation, raise the profile of Aboriginal children and reduce their vulnerability.
- R16.** That the future federal Children's Commissioner's mandate promotes child participation, including the participation of children who have concerns and are seeking redress for possible wrongdoing.
- R17.** That the future federal Children's Commissioner's mandate is coordinated with provincial child advocacy mandates to facilitate the implementation of children's participatory rights equally across Canada and to ensure children's views inform policy decision-making about matters affecting their lives.

### **Family environment and alternative care**

- R18.** That Canada adopt the United Nations Guidelines for the Alternative Care of Children in situations where it has jurisdiction over children in alternative care.

### **Abuse and neglect**

- R19.** That Canada lead on partnership initiatives to develop and promote culturally sensitive parenting programs, which include alternative forms of discipline to physical punishment.
- R20.** That Canada collaborate on initiatives with Aboriginal organizations to examine quality research and partnership contributions exploring the relationship between systemic factors, abuse and neglect and Aboriginal children's placement in alternative care. This research, along with partnership contributions, should inform practice and policy decision-making about how to reduce the numbers of Aboriginal children in alternative care while facilitating the realization of their rights.

### **Disability, basic health and welfare**

- R21.** That Canada provide more community-based, culturally appropriate and properly funded health services in Aboriginal communities to address critical health issues among Aboriginal children and to ensure that Aboriginal children have access to the same standard of health care as other Canadian children.
- R22.** That Canada promote accountable, coordinated partnerships among federal, provincial, territorial and Aboriginal bodies responsible for Aboriginal health care and ensure that those partnerships address key issues related to funding, service delivery, infrastructure and equal access to quality health care.
- R23.** That Canada adopt monitoring and evaluative strategies in association with their health initiatives to encourage better policy decision-making and more accurate reporting about outcomes in Aboriginal child health. Independent researchers specializing in Aboriginal child health should lead on these strategies.
- R24.** That Canada improve its investment in health infrastructure within remote communities by promoting initiatives, such as video links, that make quality health care more accessible within those communities.
- R25.** That Canada provide educational incentives to encourage Aboriginal youth, and adults, to train in health related fields and work in Aboriginal communities.
- R26.** That the future federal Children's Commissioner has a mandate to assume an advisory and monitoring role regarding a coordinated provincial, territorial and federal plan for addressing child poverty, particularly among vulnerable groups such as Aboriginal children.

### **Education, leisure and cultural activities**

- 27.** That Canada, together with Aboriginal representatives and the provinces/territories, develop and implement a national framework on education for all Aboriginal children residing in areas subject to federal jurisdiction. This national framework needs to take account of localized and regional considerations.

### **Special protection measures**

- R28.** That Canada immediately establish a national commission to examine child trafficking, sexual exploitation and homelessness and their interconnectedness with other issues such as violence and child abuse. The national commission's work could lead to a national centre with responsibility for addressing these issues.
- R29.** That Canada provide targeted funding for programs that promote internet safety among children and adults with responsibilities for children.

- R30. That Canada, provinces, territories and Aboriginal communities, through their collaborative work, promote the development and implementation of holistic services for child victims of trafficking, sexual exploitation, homelessness and related issues through funding initiatives.
- R31. That Canada fully implement the provisions within the *UN Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography* and the *UN Convention against Transnational Organized Crime and its Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children* (Trafficking Protocol).
- R32. That Canada review its legislation, along with the provinces/territories, for compliance with the *UN Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography* and the *UN Convention against Transnational Organized Crime and its Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children* (Trafficking Protocol).
- R33. That Canada utilize the *Best Practice Statement: Separated Children in Canada* to meet its CRC obligations to refugee, unaccompanied and separated children.
- R34. That Canada review and amend, where necessary, its legislation, regulations and practices related to refugee, unaccompanied and separated children to ensure full compliance with its CRC obligations.
- R35. That Canada fully implement the YCJA by providing the provinces and territories, which have administration responsibilities for the Act, with funding for non-custodial options in it.
- R36. That Canada develop and implement a national multi-jurisdictional framework to address the rights of children with mental illnesses or severe behavioural and developmental disorders. Federal, provincial and territorial and Aboriginal representatives should develop this framework in collaboration with key partners, including researchers.
- R37. That Canada reinforce the protection and rehabilitation of children as interdependent objectives, both of which are interrelated principles guiding decision-making under the YCJA.
- R38. That Canada ensure that any future proposed changes to the Canadian youth criminal justice system comply with the provisions and the spirit of the CRC.

**Special reservations and statement of understanding**

- R39. That Canada remove its reservation to CRC article 37(c).
- R40. That Canada engage in a national dialogue about the Declaration on the Rights of Indigenous Peoples; its relationship to the CRC; and the implementation of Aboriginal children's rights under these two human rights instruments.

*Respectfully submitted by:*

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