

Canadian Coalition for the Rights of Children (CCRC)

Implementation of the Convention on the Rights of the Child **Response to List of issues concerning additional and updated information** **related to the combined third and fourth periodic report of Canada** **(CRC/C/CAN/3-4)**

Committee on the Rights of the Child
Pursuant to Sixty – first session
17 September – 5 October 2012

Introduction

The Canadian Coalition for the Rights of Children (CCRC) has chosen to submit the following information in response to the List of Issues at this time, for the following reasons:

- The Canadian government consultation with civil society during the review process was limited to issue identification. There was no opportunity to pursue analysis or options to address these issues directly with the government.
- It is likely that the government response will be submitted late, allowing little time for civil society comment. Submitting our analysis now will allow the committee to consider it along with the earlier CCRC alternative report in its preparation for the official review in September.
- The record of UN human rights reporting reveals that Canadian government responses tend to highlight one good practice or a provincial program as indicative of progress on an issue, without providing full information about the whole country. We hope our responses help to give the committee a more holistic picture for use in making their own assessments.

This document includes the following:

1. A summary of high priority matters that the CCRC considers essential to address in this third/fourth review for Canada to make substantive progress in implementation.
2. For the issues on the List of Issues, this document provides:
 - summary response;
 - recommended actions to address identified issues; and
 - results of research and analysis.

High Priority, Essential Issues for Consideration in Canada's Third/Fourth Review

I. Participation in this Review and Improving the Process for the Next Review

- Government consultation with civil society, 1½ hours in length, was limited to issue identification. Provincial child advocates also had little input in this process.
- There has been no substantive discussion of issues or means for addressing them.
- There has been no participation of young people in the government process and no funding for NGO proposals to engage children in the review process.
- In its first Universal Periodic Review, Canada accepted recommendations to improve its monitoring and reporting process for UN treaty body reviews, including this one.

Recommendation:

I. The UN Committee should hold Canada accountable by publicly reporting that the current process is unacceptable and falls well below the norm in comparable countries. Canada should be asked to provide a specific plan for public engagement in response to the Concluding Observations, with defined timelines, and specific plans for an improved process for the participation of young people and civil society groups before the fifth review process begins.

II. Governing Mechanisms for Children in Canada

II.A. Administrative Structures at Federal and Provincial Levels

- The third/fourth review process confirms that the federal Interdepartmental Working Group on Children's Rights (IWGCR) and the Continuing Committee of Officials on Human Rights (CCOHR) for provincial governments are not adequate mechanisms for integrating children's rights into the administrative machinery of governance in Canada.
- These bodies are clerical; they have very limited authority, no mandate to work with civil society, and no transparency through public reports or clear accountability to elected, legislative assemblies.

Recommendation:

II. A. The CCOHR and Interdepartmental Working Group must be replaced with a senior-level administrative body that has enough authority to effectively implement Canada's Convention obligations within public administrative authorities in Canada, reporting through cabinet committees to federal and provincial legislatures, with regular public reports for public accountability.

II.B. Implementation or Response to Concluding Observations

- The third/fourth review shows that the Concluding Observations from the second review, many of which were repeated from the first review, have not been taken seriously.

Recommendation:

II.B. The UN Committee should hold Canada accountable for its failure to take action on the Concluding Observations from the second review and ask Canada to publicly release a specific work plan for implementation of or response to the Concluding Observations of this review within three months, including timelines and regular, public reports on progress. If suggested actions are rejected, reasons for rejection should be publicly provided within a year. More progress after this review is essential for public confidence that these processes are effective to advance respect for children's rights.

II. C. Use of Child Rights Impact Assessments

- Recent experiences, such as changes in the youth justice system through Bill C-10, show a lack of understanding within the federal government about what compliance with the Convention means. Government declarations of compliance with the Convention remain contested by provincial children's Advocates and most children's rights experts in the country. Such government declarations should be supported by rigorous and thorough child rights impact assessments. These should be done before laws and policies that affect children are adopted.

Recommendations:

II.C.1 Using youth justice as an example, the UN Committee should insist on seeing the compliance assessment of Bill C-10 done by the government; review and publicly state whether Bill C-10 violates specific provisions of the Convention; if it does, ask Canada to reconsider the youth justice provisions before implementation. This is important to uphold the integrity of the Convention's role in Canada.

II.C.2 Ask Canada to commit to the systematic use of child rights impact assessments, including consultation with young people and child rights experts to develop practical methodologies and public accountability for such assessments.

II. D. National Children's Advocate

- The third/fourth review shows the need for a focal point and advocate for children within the federal government. Previous proposals for this by the committee, by legislative committees in Canada, and in two private members bills, have been ignored without explanation.

Recommendation:

II.D. Ask Canada to provide an explanation for the rejection of previous recommendations and provide evidence to show that the current system adequately considers children's rights in all phases of policy development and implementation. If

that cannot be done, then Canada should take serious action toward establishment of a national children's advocate to be a national voice for children and work with provincial child advocates to consistently implement children's rights within Canada's federal system of governance.

III. Equitable Treatment for all Children in Canada

- This issue arises in several areas of children's rights in Canada because there is no effective mechanism to investigate and compare the situation of different groups of children across the country. The demise of the Social Union Framework Agreement, which was highlighted as progress in the 2003 Concluding Observations, puts an end to one tool that provided some consistent analysis of the situation of young children across Canada and the outcome impacts of public investments in child development.

Recommendation:

III. Probe what investigations have been done in response to previous recommendations about equitable treatment, and ask Canada to establish an administrative mechanism to do comparative studies, investigate claims of inequitable treatment by children, publicly report on them, and take steps to resolve them.

IV. Children in Alternative Care

- The unacceptably high number of children in alternative care in Canada and the number who leave care at age 16 to 18 without support for the transition into adulthood is a matter for urgent attention, across provincial boundaries.

Recommendation:

IV. The UN Committee should ask Canada to focus immediate attention on this matter, using the UN Guidelines for the Alternative Care of Children as a good practice guide, and publicly release an action plan to achieve full compliance with the Convention within five years.

V. National Strategy to Prevent Violence against Children

- The third review revealed a patchwork of initiatives that would be more effective within a national strategy to prevent violence against children. Federal government leadership would help to ensure that all children can exercise their rights to grow up free from violence.

Recommendation:

V. While acknowledging that specific legal measures have been taken to increase the legal penalties for some forms of violence against children, the committee should encourage Canada to develop and implement a national strategy to prevent all forms of violence against children.

CCRC Reponses to the List of Issues Part I

1. Please inform the Committee on the measures taken by the State party, if any, regarding the withdrawal of reservations to Art. 21 and 37(c) as recommended by the Committee in its previous Concluding Observations (CRC/C/15/Add.215 para. 7).

Reservation to article 37(c)

Reservation to 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.

Summary: Passage of Bill C-10 may allow for withdrawal of this reservation, but it will also increase the use of youth detention, without improving the conditions in youth detention centres.

Recommendations:

- 1.1 The federal government should expand its efforts, in cooperation with provincial governments, to ensure that alternative measures are effectively implemented for youth in conflict with the law to prevent detention, except as a last resort. Full implementation of the current Youth Criminal Justice Act should be a priority; proclamation of the provisions in Bill C-10 should be delayed.
- 1.2 For youth who are detained, the federal government should withdraw its reservation to article 37(c) and ensure that youth are no longer detained with adults.
- 1.3 Federal and provincial governments should establish a plan and budget to improve the conditions in youth detention centres, including the provision of mental health services, sufficient rehabilitation services, and improved protocols and staff training in behaviour management.
- 1.4 Access to family and community must be a high priority in decisions regarding placement and location of youth detention centres.

Research and Analysis:

The federal government has moved a step toward a legislative mandate to withdraw its reservation to article 37(c), with the Royal Assent of omnibus Bill C-10 on 13 March 2012ⁱ. Bill C-10 provides that: “no young person who is under the age of 18 years is to serve any portion of the imprisonment in a provincial correctional facility for adults or a penitentiary.” However, this provision has not yet been proclaimed. If the amendments in C-10 to the 2003 Youth Criminal Justice Act are proclaimed as expected in October, the reservation to article 37(c) may be removed, but at the same time Bill C-10 will usher in provisions that are widely expected to increase the number of youth in detention, contrary to the Convention on the Rights of the Child, UN Committee guidance, and international youth justice norms.

Furthermore, there are no indications of a plan or budget to improve the conditions in youth detention centres. Conditions in current centres include: overcrowding, peer violence, incarcerating females with males in unsafe conditions, abuse of chemical and physical restraints and isolation, lack of sufficient mental health services and other concerns, which are as important as separating children and youth from adults. The same concerns about the negative influences on children housed with adults arise with respect to children in the child welfare system who are, in some cases, inappropriately placed in detention centres in close contact with young offenders.

Concerns about the conditions under which youth are detained are exemplified by the experience of Ashley Smith, who, at age 14, was placed in a youth facility for one month after throwing crab apples at the mailman, in 2003. She was placed in solitary confinement after disruptive behavior on her first day. Her initial one-month sentence extended to almost four years, mainly in isolation, due to successive behavioural issues. Her mental ill-health escalated as she was moved from detention near her community to more than eight different penal facilities, ending up in an adult detention facility in a different province at the time of her death by self-strangulation in 2007.

Adoption of the Youth Criminal Justice Act (YCJA) in 2003 introduced a strong attempt to lower youth custody rates. Since its enactment, government and independent analysis indicates that the rate of youth incarceration has declined, along with the rate of youth crime, as the Government of Canada's 2009 report to this Committee states. In its current form, the YCJA can be used as a powerful instrument to avoid the overuse of detention for youth, in separate facilities or not. There has been considerable progress in the use of alternative measures to detention in many provinces and territories, but the full benefits of the YCJA have not yet been realized. Bill C-10, if proclaimed, is widely expected to reverse this progress.

It should be noted that Aboriginal children are significantly over-represented in the youth criminal justice system. 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.

References and Recommendations from CCRC Alternative Report, *Right in Principle, Right in Practice*:

- Best Interests of the Child, page 6-7
- Children's Rights in the Criminal Justice System, page 49-51

Reservation to article 21

The federal government placed both a reservation and a statement of understanding pursuant to article 21 of the Convention on domestic and inter-country adoption.

Reservation

(i) 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.

Statement of understanding

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.

Summary: Several factors relating to adoption among Aboriginal peoples have changed since the reservation was registered.

Recommendation:

1.5 Federal and provincial/territorial governments should engage in substantive discussions with Aboriginal representatives and service providers, as well as children and youth, to develop policies that will allow removal of the reservation.

Research and Analysis:

At the time of ratification when this reservation was made, Canada had not endorsed the UN Declaration on the Rights of Indigenous Peoples; the Committee on the Rights of the Child had not developed General Comment No. 11; and “competent authorities” generally excluded First Nations governance structures.

Child protection and adoption are mainly under provincial/territorial jurisdiction. Customary adoption is a decentralized and inconsistent practice across Canadian jurisdictions.ⁱⁱ There is a trend to legally and/or administratively recognize First Nations agencies as competent authorities in the control of Aboriginal child welfare. Relevant concerns in relation to the alternative care of First Nations children include different and inequitable funding for First Nations child welfare (federal funding less than funding provided by provinces and territories for other Canadian children, subject to a current appeal in the Federal Court of Appeal); lack of or confusion in coordination between provincial and delegated First Nations child welfare agencies; and inequitable treatment of children by virtue of the type of alternative care they receive (e.g., informal or formal kinship care).

International normative developments could guide a renewed effort to promote culturally appropriate and rights-based approaches to the alternative care and adoption of Aboriginal children.

References and Recommendations from CCRC Alternative Report, *Right in Principle, Right in Practice*:

- Best Interests of the Child, page 6-7
- Recommendation 1, page 39
- Children's Right to a Family, Identity and Culture, page 56
- Recommendation 4, page 58
- Recommendations 1-4, page 60
- Fulfilling the Rights of Aboriginal Children, page 61-64
- Protecting the Rights of Children in Government and Alternative Care, pp. 65-71
- Recommendations 1, 3-5, page 70-71

2. Please inform the Committee on measures taken to incorporate the Convention on the Rights of the Child into national law and how it is reflected in the legal framework in its different levels, federal, provincial or territorial.

Summary: There is no national children's bill of rights or legislation to incorporate the Convention as a whole into domestic law. Canada's approach to legally recognizing children's rights has been piecemeal, inconsistent, and inequitable, both in federal and provincial/territorial legislation. There remain significant gaps in protecting all rights for all children.

Recommendations:

2.1 The Convention on the Rights of the Child should be incorporated into Canadian law through federal enabling legislation, including a plan to review and bring all current legislation into compliance within 10 years.

2.2 Legal education on children's rights should be introduced or expanded in university faculties of law and training in children's rights should be expanded for lawyers and other professionals who work with children.

2.3 Child Rights Impacts Assessments should be used in all jurisdictions to ensure compliance with the Convention before laws and policies, that affect children, are adopted.

Research and Analysis:

Over the years, some federal and provincial/territorial laws (in statute and in common law) have been adopted or amended to comply with the Convention; some continue to abrogate some of the provisions of the Convention; and some new legislation has been introduced that contravenes the Convention (see questions #1, 7, 8, 13, 14, Part II and other references to legislation in this document). At the provincial/territorial level, legal protections for children vary between jurisdictions with resulting inequities and gaps in fields such as labour law; child welfare services and protection; and children's rights to be heard in administrative and judicial decisions (see question #8).

There has never been a robust review of how existing laws fulfill or detract from fulfillment of children's Convention rights, by the federal or provincial/territorial governments. For new federal legislation, the current policy process includes a

procedural check of proposed legislation for explicit violations of all human rights treaties Canada has ratified; the depth and detail of these checks, however, is unknown because there is no public reporting. This process does not approximate a systematic child rights impact assessment to determine if proposed or existing laws contribute to or detract from fulfillment of children's Convention rights. The result is that, for a number of new Bills such as C-10 and C-31 (see questions #13 and 14), the analysis of numerous child rights experts concludes that there are violations of children's rights, but the sponsoring Ministers claim that the bills comply with international treaty rights. At the provincial level, in Quebec, when legislative measures are being developed, the memorandum accompanying a bill to the provincial cabinet is to consider the bill's potential impacts on children and youth, with particular reference to the best interests of the child. However, there is no actual evidence of the use of child rights impact assessment in this or any Canadian jurisdiction.

Canadian courts sometimes use the Convention to inform the interpretation of federal and provincial legislation and the *Charter of Rights and Freedoms*. Although it is not directly applicable, the Convention is used selectively and on an ad hoc basis. Some recent court judgments, such as the Supreme Court ruling in the Omar Khadr case and the British Columbia Supreme Court Ruling in the recent Polygamy Reference give substantial weight to the Convention for interpretation of Charter Rights for children. However, a 2004 decision of the Supreme Court on the question of physical punishment found that the best interests principle was not a "matter of fundamental justice." This decision, which retains the right of parents to physically discipline their children, has been criticized by child advocacy organizations and others as inconsistent with the Convention and with the UN Committee's jurisprudence in corporal punishment. The lack of consistency in existing legal protections for the rights of children in domestic legislation and the lack of consistency in court judgments that use the Convention to interpret domestic laws are reasons for establishing clarity through enabling legislation.

References and Recommendations from CCRC Alternative Report, *Right in Principle, Right in Practice*:

- Recommendation 4, page 7
- Law Reform, page 11
- Child Impact Assessments page 12

3. Please provide information on the implementation of Canada's 2004 National Plan of Action for Children (CNPA), particularly with regard to the achievement of goals and objectives and impact by goal, sector and age group and percentage of budget allocated, at federal, provincial and territorial levels. Please also provide information on the current action plan for the implementation of children's rights, its priorities, goals and targets, timetable and budget allocated, and if it takes the previous Committee's *Concluding Observations into consideration (CRC/C/15/Add.215, para. 13)*.

Summary: A *Canada Fit for Children* was adopted by federal Cabinet in 2004 pursuant to the UN General Assembly Special Session for Children in 2002. It makes no reference to the specific provisions of the Convention, lacks dedicated resources and targets, and is

not monitored. There is no evidence it has been used to guide policy or programs. It has not and cannot function as a plan for implementing the Convention consistent with the UN Committee's guidance. No provinces/territories have comprehensive plans addressing the scope of rights of children from birth to age 18.

Recommendation:

3.1 It is preferable to focus on a national strategy for implementing the Convention rather than revising the 2004 plan for children or developing another general action plan for children.

References and Recommendations from CCRC Alternative Report, *Right in Principle, Right in Practice*:

- National Plan of Action, page 16

4. Please inform the Committee whether due consideration is being given to the establishment of a national coordination mechanism, in particular between the federal, provincial and territorial authorities, for the implementation of policies, as mentioned in this Committee's previous Concluding Observations (CRC/C/15/Add.215 para. 11).

Summary: The mandate of the current mechanisms is limited to a clerical exchange of information, with no authority, no mandate for working with civil society, and no public accountability. While there are considered coordination mechanisms, they cannot fulfill that role. The trend toward ad-hoc working groups on very specific issues ignores the integrated nature of child development and children's rights.

Recommendation:

4.1 The federal Interdepartmental Working Group on Children's Rights and the federal/provincial Continuing Committee of Officials on Human Rights should be replaced with a more senior level body that has sufficient authority and an explicit mandate to implement the Convention, with public accountability to elected legislatures and a mandate to work with young people and civil society organizations.

Research and Analysis:

Federalism and the division of responsibilities for children's policy between federal and provincial/territorial governments continues to be a challenge to making progress for children. There is no intergovernmental body or mechanism that adequately addresses children's policy issues. This lacuna is exacerbated by the fact that there is also no federal parliamentary body with any focus on children.

There is a trend towards the establishment of federal-provincial-territorial (FPT) working groups on selected, specific aspects of policy for children. They are not coordination mechanisms consistent with the guidance from the UN Committee. They do not link their narrow focus with broader efforts to implement all the provisions of the Convention; they focus on isolated and specific issues; they generally lack a statutory mandate; and they typically have no public consultation mandate.

The Continuing Committee of Officials on Human Rights (CCOHR) coordinates the processes of adoption, ratification, monitoring, and reporting implementation of all human rights treaties in force for Canada, but has no mandate to coordinate the substance of implementation. A Federal Interdepartmental Working Group (IWGCR) on Children's Rights was formed in 2007; it shares information between departments, but lacks sufficient authority to propose policy options or determine program directions.

There has been no meaningful consultation with civil society by these two bodies, including in the current review of the Convention on the Rights of the Child. The CCOHR invited a limited, self-determined group of organizations to a meeting to prepare themselves for the government's dialogue with the Committee. NGOs were invited to identify what issues were important, but there was no dialogue or discussion of the issues. The IWGCR and the CCOHR refused to provide information on the government's response to the 2003 recommendations, let alone discuss options for action, despite several requests by the CCRC and other groups at different points in the CRC monitoring process to date. The IWGCR subsequently invited the CCRC to present the content of their Alternative Report. The CCRC has been able to pursue subsequent discussions with a few individual federal departments. Action remains the responsibility of individual departments at all levels of government; within departments this is a low priority and there is little understanding of children's rights.

Several coordination mechanisms exist at the provincial level. A unique approach in Prince Edward Island came with the establishment in 2010 of a Child and Youth Commissioner to enhance the coordination of services for children and youth through an inter-departmental model that focuses on the child and the sharing of best practices and resources across the province. New Brunswick improved coordination between departments in response to recommendations from an investigation into the death of Ashley Smith, done by the Children's Commissioner.

References and Recommendations from CCRC Alternative Report, *Right in Principle, Right in Practice*:

- Monitoring and Reporting, page 14

5. Please inform the Committee on whether the State party has a unified system for data collection and analysis with child-rights focus, covering all groups of children, with disaggregated data by age, sex, provinces/territories, socio-economic background and ethnic origin.

Summary: There is no national data system that regularly and comprehensively collects information on all dimensions of the situation of children that are relevant for the implementation of the Convention, for children from birth to age 18. The federal and provincial/territorial governments and various research institutes and organizations publish detailed data on certain aspects of child well being for certain age groups.

Recommendation:

5.1 The federal government should lead in developing a database that would be sufficient to allow independent researchers to assess the situation of children and their comprehensive rights, including disaggregated information on the situation of different vulnerable groups of children in different parts of the country. This should be done in co-operation with provincial/territorial governments and in consultation with civil society organizations that work with children. A national database should be robust and reliable enough to address continuing sources of disagreement over accuracy of data, as we have now in childcare, child poverty and the level of allocation of national resources to services for children.

Research and analysis:

Current sources of information provide partial data, with severe limitations in scope, detail, or timeliness. For example, under the Canadian Federal-Provincial-Territorial Social Union Framework Agreement (SUFA) for early childhood development and well-being, all jurisdictions report biannually on their investments and their progress in certain programs and services related to early child development, but this is limited to very specific aspects of child development and to young children; it in no way approaches a comprehensive approach to monitoring the Convention rights of Canada's children. In addition, the current SUFA will expire in 2013; any future agreements are unlikely to include even this basic data sharing, as devolution of social policy to the provinces increases. Some important aspects of children's rights are excluded in any measurement system, such as data on children in employment below age 15, and disaggregated data for children under 18 in employment (employment data aggregates ages 15-24). Another significant gap is the absence of an official national definition of child poverty and agreement on official measures of it.

The difficulty in both aggregating and disaggregating data on children is due in part to disparate data collection systems that utilize different definitions, concepts, approaches and structures across the provinces/territories. In 2007, the Senate Committee on Human Rights expressed regret at the lack of a "coordinating mechanism to bring [existing] research [and data] together to create a national portrait of children in Canada." The effective use of data to inform public awareness and parliamentary priorities is extremely limited.

Some significant national sources of data on child and broader social well being have been terminated in the past year, including a mandatory national census and the National Council of Welfare, which for many years provided statistical evidence and analysis on child and family poverty that civil society cannot easily obtain.

A regular, comprehensive report on the state of children nationally and at provincial/territorial levels, as British Columbia and New Brunswick have attempted in recent years, would provide decision-makers and the public with much improved understanding of the progress of Canada's children.

References and Recommendations from CCRC Alternative Report, *Right in Principle, Right in Practice*:

- Data on Children in Canada, page 12-13

6. Please provide information on the main issues raised by the 2006 Aboriginal Children's Survey, and their follow-up in policy and programme terms, both at national, provincial and territorial levels. In this respect, please inform the Committee whether plans are underway to improve statistics in order to ensure that Aboriginal people are represented appropriately.

No data available to civil society organizations.

7. Please provide information regarding the establishment of a federal ombudsman's office responsible for children's rights, in conformity with the principles relating to the status of national institutions for the promotion and protection of human rights (Paris Principles), that coordinates with the ombudsmen at provincial and territorial levels, as suggested in this Committee's previous Concluding Observations (CRC/C/15/Add.215 para. 15).

Summary: Parliamentary committees have reinforced the UN Committee's 2003 suggestion; civil society organizations and provincial children's advocates have repeatedly called for creation of a National Children's Commissioner; and two private member's bills have been introduced on this matter, but not debated. So far the government has indicated that the current approach to governance for children is adequate. Further devolution to provincial governments is the trend.

The Canadian Human Rights Commission is exploring expansion of its role to include monitoring of international human rights, but its legislated mandate is too narrow to be an adequate mechanism for monitoring or adjudicating children's rights.

Recommendations:

7.1 The establishment of a national Children's Commissioner is essential, to address policies under federal jurisdiction that affect children and to work with the provincial/territorial Child and Youth Advocates to close gaps and inequities between federal and provincial policies. The mandate should be solidly based on the Convention, the Paris Principles for Independent Human Rights Institutions, and General Comments 2 and 5.

7.2 The mandates of established provincial Child and Youth Advocates, which are often limited in scope, should be reviewed for consistency with these norms.

Research and Analysis

The Canadian Council of (provincial and territorial) Child and Youth Advocates, Canada's Senate Standing Committee on Human Rights and a number of civil society organizations have recommended the establishment of a Children's Commissioner at the federal level. A second Private Member's Bill for a national Children's Commissioner was tabled in May 2012. A federal Commissioner is particularly necessary given the

equity gaps for children across the country and the considerable impact that federal policies under different departments have for children.

The Canadian Human Rights Commission (CHRC) lacks the legislative mandate and operational focus to fulfill the role of a federal ombudsman's office responsible for children's rights under the Convention or to effectively monitor or adjudicate children's rights. Its mandate focuses on complaints regarding discriminatory practices within the jurisdiction of the federal government (e.g. federal heads of power such as banks, Aboriginal people, immigration, etc.). It was established in 1977 under the Canadian Human Rights Act; it also administers the Employment Equity Act. It can only receive and investigate claims of *discrimination* based on the limited grounds in the act. The prohibited grounds of discrimination are "*race, national or ethnic origin, colour, religion, age, sex, sexual orientation, marital status, family status, disability and conviction for an offence for which a pardon has been granted or in respect of which a record suspension has been ordered.*" CHRA, R.S.C., 1985, c. H-6, s 3(1). Regarding the prohibited ground of age, the Commission may hear complaints of discrimination from children based on their age, but this falls far short of protecting the full range of rights enshrined in the Convention. Because children have different needs and capacities than adults, claims of unequal treatment of children based on age are of limited use to implement Convention rights.

The Commission's mandate cannot be extended to address the full range of children's rights, which is necessarily much broader than adjudicated cases of discrimination. Even many rights that fall under federal legislation and policy are outside the mandate of the Commission, including employment, immigration, criminal justice and international humanitarian law.

The adjudication processes used by the Commission are not child-friendly. If the Commission finds evidence that a violation has occurred under the act, it may refer the case to the Canadian Human Rights Tribunal or to another adjudication process, which are inherently adversarial processes; they are not responsive to the qualities that make children's rights different than adult rights and cases often take years to settle, which is not in the best interests of children.

The Commission may also undertake public awareness, research, reviews, and studies referred by the Minister of Justice; these functions are also bound by the definition of discrimination in the act. While expansion of its interest in international human rights norms is welcome, it is required to interpret them through its narrow, legislative mandate. In practice, the CCRC has asked the CHRC to research and publicly report its assessment of reasonable allegations of discrimination in a federal policy that affects children; but, because the issue involved was not directly related to one of the specific grounds of discrimination in their act, the request was denied.

The Canadian Human Rights Act and the Commission do not have a specific focus on children, by legislation/mandate or in practice. The Commission has not published any of its own policies or guides to address the rights of children and youth. In the

Commission's November 2011 submission to the UN Committee, it noted its work with children but acknowledged that all cases are linked to other grounds of discrimination: "The Commission recognizes the particular vulnerability of children and has considered a number of children's human rights issues *where the issues are linked to grounds of discrimination, such as race and religion* [emphasis added].

In practice, the Commission has been ineffective in addressing children's rights even within its narrow mandate. In 2007, the Commission agreed to consider a complaint focused on children – a rare occurrence. The case involves funding disparity between federal funding for child welfare services for First Nations children on reserve and provincial funding for child welfare for other Canadian children. The case was dismissed on a technical basis in a March 2011 tribunal decision, without hearing the merits. The decision was appealed in the Federal Court in 2012, which ordered a new Tribunal. Currently, the Government of Canada is appealing that decision to the Federal Court of Appeal. This adversarial process has taken years and still awaits resolution. This case reinforces the basic shortcomings of the Commission as an institution to protect children's rights.

The Commission can play an important role as an advocate for children's rights where they coincide with their legislated mandate and could do more as an ally in promoting public awareness and understanding about children's rights. For the reasons cited above, it cannot be an appropriate mechanism for monitoring or adjudicating children's rights, consistent with UN Committee guidance (as in General Comments 2 and 5) and international good practice.

The UN Committee has in previous Concluding Observations recognized the need for a national ombudsperson or Children's Commissioner as an effective counterpart/complement to the system of provincial and territorial Child and Youth Advocates. The provisions set out in the current Bill C-420, *an Act to Establish a National Commissioner for Children and Youth*, approximate such an institution.

The establishment of provincial/territorial child advocates and strengthening of their mandates has proceeded since Canada's last review in 2003. Since then, advocates have been established in British Columbia, Yukon and New Brunswick; only Prince Edward Island, Northwest Territories and Nunavut have not done so, though legislation was introduced in Nunavut in June 2012. The provincial and territorial advocates collaborate as the Canadian Council of Child and Youth Advocates but have no mandate to act on federal matters.

However, the mandates and scope of powers of the provincial/territorial children's advocates vary widely and are not fully consistent with the Paris Principles for Independent Human Rights Institutions or General Comments 2 and 5. For example, while many provincial/territorial advocates have a mandate to receive complaints, they are limited mainly to receiving complaints related to specified provincial/territorial child welfare or other designated services. Essentially, the offices do not have mandates to address *all the Convention rights of all children* in their jurisdictions.

References and Recommendations from CCRC Alternative Report, *Right in Principle, Right in Practice*:

- National Children's Advocate, page 15

8. *Please provide detailed information and data, based on research or analysis, regarding respect for the views of the child, especially in judicial and administrative proceedings affecting the child, as established in article 12 of the Convention.*

Summary: Recognition of the right of children to be heard in judicial and administrative decisions that affect them is inconsistent across Canada. In practice, it is a patchwork within the same policy area, such as education, and within the same jurisdiction, e.g. different treatment in child welfare, custody, and juvenile justice. There are small good practice initiatives that could be expanded and a provincial court ruling that should be applied in all jurisdictions.

Recommendations:

8.1 Children under age 18 should in all cases have the right to be heard in decisions affecting them, presumed competent, and invited to express their views as a matter of course (as established in the Supreme Court of Yukon 2010 decision).

8.2 A review of legislation and practice in the areas of child welfare, family law, youth justice, health, and education should focus on strengthening the right of children to be heard, as a component of determining the Best Interests of the Child. The review should also include the minimum ages set in law for different rights and competencies.

8.3 In each jurisdiction and sector, legislation and policy should be complemented with a plan to support children and youth in exercising this right. A key element of empowering children to express their views is a guarantee that they have the right to be informed about the processes and facts to support their decision-making, and provided consistent support by independent advocates (legal or system-based) appropriate for the various decision-making processes.

Research and Analysis:

The right of children under age 18 to participate and be heard in judicial and administrative decisions affecting them is recognized inconsistently throughout Canada, and varies with the jurisdiction and the type of decision. The state of the law and practice can best be described as insufficient, and as a patchwork even within the same area of law (e.g., within education) or within the same province or territory (e.g., there is different treatment in child welfare, custody, education, medical decisions, etc.). This lack of coherence is further exacerbated by conflicts in the legal minimum ages at which children are invested with rights to make decisions such as to join the military (age 16), to vote (age 18), to be criminally responsible (age 12) and to be subject to adult sentences in criminal law (ages 14-16, depending on the province/territory).

Administrative Proceedings: Many important decisions that affect children's current and future lives are made in systems such as education and child welfare, that differ across the provinces and territories. In child welfare systems, children and youth often

have little say in what happens to them once they are placed in the care of the state. Despite the fact that many provincial and territorial jurisdictions afford children participatory rights in the court proceedings that lead to their coming into state care, their rights to participate in decisions about their care afterward often come without recourse or remedy.

Some provinces and territories such as British Columbia, Northwest Territories and Nova Scotia extend the right to participate in administrative decisions to students in the school system without age distinction (though in practice there can be little support to exercise this right); while others such as Alberta and Ontario limit participation to students over the age of 16 with respect to special education hearings, and preclude participation entirely in other areas until 18 and 19 years of age. For example, students under 18 have no standing in their own expulsion and suspension appeals before school boards in Ontario (with the exception of 16- and 17-year olds who are living independently). In Ontario, student representatives sit on the governing board of trustees for the school boards, but their participation is merely titular, as they have no voting rights.

Further, although human rights legislation across Canada generally provides that children can come forward with human rights complaints in their own capacity, the scope of what can be raised in various provincial and federal human rights tribunals is very limited. None of them cover the full range of Convention rights. This avenue for redress by children is further diminished by the exclusion of age discrimination as a ground of complaint for children. A recent Ontario Human Rights Tribunal decision has declared this to be contrary to our *Charter* and read in age as a ground for claims.

At the federal level, immigration-related decisions are another example of administrative decisions in which respect for the child's views and wishes is lacking. Despite the fact that the case of *Baker v. Canada (Minister of Citizenship and Immigration)* is cited as an authority for establishing the importance of the Convention in interpreting Canadian legislation, the background to the decision is problematic from the point of view of the right of children to be heard. This case involved the deportation of a mother and the importance of considering the best interests of her children when making this kind of decision. The children in this case sought standing at two levels of court, but each time were denied, with costs being ordered against them at the Federal Court of Appeal. Children continue to have no standing in proceedings to determine their best interests under the Immigration and Refugee Protection Act. There is no corresponding requirement that their views and wishes be considered.

Court Proceedings: Generally, children under age 18 must be represented by a litigation guardian, for example, in pursuing civil law remedies. Children over the age of 12 years in many provincial and territorial jurisdictions have participatory rights in child protection proceedings. Notable exceptions include Saskatchewan, which provides no right to participate, and Nova Scotia, which sets the minimum age at 16 years. Even in those jurisdictions in which the law establishes clear guidelines for child participation and legal representation, young people report that in practice, they find the court proceedings confusing and, at times, their legal representation inadequate. Even in jurisdictions like

Ontario where specialized lawyers act for children, such as in an Office of the Children's Lawyer, the role of counsel is to present a case for the best interests of the child, not necessarily for the child's views and wishes.

While the federal Divorce Act provides guidelines for many aspects of child custody and maintenance payments under family law, it does not provide guidelines to protect the right of children to be heard in court proceeding relating to custody. While there are some good practices in some family courts and expansion of the use of non-adversarial processes, custody hearings are frequently cited by young people as important occasions when their views were not respected.

In 2009, a multi-disciplinary conference on application of the Best Interests of the Child in Canada focused specific attention on the issue of children's voice in family court. The conference report includes a wide range of suggestions for action and research.ⁱⁱⁱ

In a Supreme Court of Yukon hearing to consider applications by the parents of a 12-year-old child to vary an existing custody and child support order granted under the Divorce Act, the evidence with respect to custody did not include information about the child's views, or whether he wished to express them.^{iv} The Court ruled in 2010 that children have legal rights to be heard during all parts of the judicial process, including family case conferences, settlement conferences and court hearings or trials. An inquiry should be made in each case, and at the start of the process, to determine whether the child is capable of forming his or her own views, and if so, whether the child wishes to participate. If the child does wish to participate then there must be a determination of the method by which the child will participate. Since then, two court decisions in British Columbia have reinforced this approach. It should be expanded in law and practice across the country.

Youth Justice Courts in Canada operate on the presumption that young people over the age of 12 years are capable of retaining and instructing counsel in their own defense against criminal charges (children under 12 cannot be charged with criminal offences). The young person charged is able to participate in the court proceedings in the same way that an adult would be, instructing counsel and choosing whether to plead guilty or engage in alternative dispute resolution. However, the quality of young people's participation even in that court system is greatly affected by the quantity and quality of information children are given about the process, and by patchy access to legal aid. In the youth justice system, many decisions may be made by young people prior to attending court. For example, a young person might waive the right to counsel or to have an adult present prior to providing police with incriminating evidence. Despite the requirement that the police advise young persons of their rights, many young people proceed without understanding the nature of the right they have chosen to waive. In one progressive pre-charge diversion program in Toronto, young people were occasionally pressured into accepting responsibility for criminal acts they did not commit because they were threatened with criminal charges as the alternative^v.

Personal decision-making: Although the question focuses on judicial and administrative proceedings, these proceedings are mechanisms by which the ability to make personal decisions is respected and enforced. Personal decision-making rights again vary by jurisdiction and are thus inequitably provided. For example, in Ontario children can make personal health decisions if they are competent. If a health practitioner determines that the child is not competent, then the child, as a party, can request a hearing before the Consent and Capacity Board to challenge this decision. In other provinces, however, a health decision made by a competent young person can be over-ridden by the court if the decision appears to be contrary to the child's best interests.

References and Recommendations from CCRC Alternative Report, *Right in Principle, Right in Practice*:

- Recommendation 1, page 6
- Best Interests of the Child and Recommendations 1-2, page 6-7
- Right to Be Heard and Participate and Recommendations, page 9-10
- Recommendation 1, page 32

9. Please provide information on the actual impact in poverty reduction, disaggregated by sex, age, minority and ethnic origin, of the various child and family benefits introduced since 2005 (Child Disability Benefit, the Universal Child Care Benefit, the Registered Disabilities Service Plans, the Child Tax Credit and the Working Income Tax Benefit), at national, provincial and territorial levels.

Summary: While the government claims that recent changes in family benefit programs contribute to raising some families above the poverty line, their primary purpose is not reducing child poverty and they have inequitable, after-tax impacts for children in low-income households. Most importantly they do not address the continuing significant percentage of children whose health and potential is affected by living in poverty.

Canada is capable of doing more. It spends less than comparable countries on key areas that could make a substantive difference for children living in poverty.

Recommendations:

9. 1 The federal government should adopt specific targets and plans to reduce child poverty, as part of a national poverty reduction strategy.
9. 2 A review of the child and family benefit system should focus on: maximizing resources to reduce child poverty; equitable treatment; simplifying the system to be a fair, transparent, and easy-to-understand system; and allocating a reasonable share of national resources for children.

Research and Analysis:

Canada has no national, official definition or measurements of child poverty (Statistics Canada uses multiple measures to inform "risk" of poverty; some provinces have official measures). Using relative income poverty, the OECD standard, Canada's child poverty rate is 14%, about the same as in 1976 (with minor fluctuations in between). This rate is higher than two-thirds of other OECD countries, and higher than the OECD average.

Using Canada's unique and commonly cited Low Income Cut Offs (LICO) measure, Canada's child poverty rate is pegged at about 8% and in decline, in contrast to what the relative income (Low Income Measure) and another unofficial government measure (Market Basket) tell us; different measures paint different pictures of levels and trends in child poverty. Without a consensus or official measure, disputes about how to measure child poverty distract from actually taking steps to reduce it.

In Canada, the child and family benefits and social assistance system has some universal programs but is strongly means-tested and favours support for working parents/families (the benefit system is designed to encourage and reward employment). Canada spends about 1.25% of GDP on child-focused family benefits and tax breaks – a low amount relative to most other OECD nations. In recent years, the federal government has enhanced the National Child Benefit and the Canada Child Tax Benefit, but introduced other inequitably designed benefits and tax credits including tax credits for sports and arts, which favour higher income families. Canada's 2012 budget maintains a steady level of investment in child benefits in contrast to a number of European nations that recently cut child benefits in the economic downturn. But many of the nations that cut child benefits had significantly higher investments per capita than Canada.

Canada reduces child poverty through tax and transfer policies less than for other groups, including seniors. Canada invests \$40 billion in elderly benefits, close to three times the amount it invests in children (at \$14 billion in budget 2012). The rate of low income of Canada's elderly has declined to 6%, in contrast to a rate of child poverty of 14%. That the rate of children in low income is also higher than that of the general population suggests they are not given priority in our tax and social policies. There is no excuse not to apply the same determination to reduce child poverty as we have for our elderly.

The Universal Child Care Benefit is problematic as well. The federal government claims that the UCCB raised an estimated 55,000 children above the poverty line, but \$100 a month is not enough to make childcare affordable for them and the after-tax value of the benefit is inequitable. This benefit replaced service investments in early childcare and education; it does not address the ability of every child to access quality early childcare and education, an area of social policy where Canada is an international laggard.

There is no national strategy to reduce poverty, or child poverty. Many provincial/territorial jurisdictions have plans and strategies of varying scope, but the lack of national strategy contributes to the low priority for children in the allocation of federal resources, and an inequitable and incoherent system of tax measures.

References and Recommendations from CCRC Alternative Report, *Right in Principle, Right in Practice*:

- Non-discrimination and Recommendations, page 5-6
- First Call for Children and Recommendations, page 7-8
- Right to Survival and Development and Recommendation, page 9
- Transparent Budgeting for Children and Recommendations, page 13
- Children's Right to be Free from Poverty and Recommendations, page 32-34

- Recommendation 1, page 55

10. *Please provide more information on the efforts in fighting the gaps between Aboriginal and non-Aboriginal children in the fulfillment of their rights to health and education. On health, please provide information on the impact on aboriginal children and youth of investment in the Maternal Child Health Program, the first Nations and Inuit Health Programs, the National Aboriginal Youth Suicide Prevention Strategy, the National Anti-Drug Strategy, the National Native Alcohol and Drug Abuse Program and Youth Solvent Abuse program, among others mentioned in the State party's report. On education, please provide information on the impact on aboriginal children and youth of the initiatives to support culturally relevant elementary, secondary and post-secondary education for First Nations and Inuit students, the Aboriginal Head Start Program and the 2008 Road Map for Linguistic Duality.*

Summary: Aboriginal children have health outcomes that are persistently worse than non-Aboriginal children. Aboriginal infant mortality is 3 to 7 times higher than the national average; immunization rates are 20% lower than the general population; and 62% of Aboriginal children living on reserve are either overweight or obese.^{vi} According to Health Canada, suicide rates are five to seven times higher for First Nations youth than for non-Aboriginal youth and suicide rates among Inuit youth are among the highest in the world, at 11 times the national average.^{vii}

Recommendations:

10.1 The federal government should develop and implement a transparent, equitable funding policy for all First Nations child services/programs, designed to achieve sufficient coverage by culturally relevant programs and services with outcomes comparable to other Canadian children. This should be done in collaboration with Aboriginal communities. Regular, independent reporting on resource allocation and progress for affected children could provide public accountability.

Research and Analysis:

Health: The Maternal Child Health (MCH) Program is very much needed in First Nations communities; it should be extended to every community, which it currently is not.^{viii} More effort should be made to increase the role of midwifery, so that birthing can be supported closer to home, especially for those in remote communities.^{ix} Culturally specific information and education on sexual health, pre-pregnancy readiness, breastfeeding and awareness about issues such as nutrition and substance abuse is also needed. More and better-trained staff is required, including, but not limited to: doctors, midwives, obstetricians, obstetrical nurses, doulas, maternal care workers and lactation consultants.^x

In addition, accessing health care professionals for Aboriginal children with special needs within existing community resources is very difficult; these include: speech therapists, physiotherapists and specialized physicians.^{xi} Many of the mental wellness programs and services supported by the federal and provincial/territorial governments suffer from gaps

between and among these services; they are not well coordinated and are not always delivered in a culturally safe and competent manner. Often programs are funded short term (such as the Suicide Prevention Strategy) and some are based on a just a single fiscal year and do not allow communities the flexibility needed to respond to emerging issues. More fulsome implementation of Jordan's Principle is also needed, as described in CCRC's report (page 63), and wide jurisdictional gaps need to be addressed in order to avoid either duplication or scarcity with respect to the MCH Program.

Education: Educational funding for Aboriginal students is consistently underfunded. The 2% funding cap for elementary and secondary funding produces an estimated shortfall of \$233 million (as of 2008). This funding formula was last indexed in 1996 and urgently needs to be updated, especially since it has resulted in a backlog of over 10,000 Aboriginal students who could have enrolled in post-secondary programs if not due to the funding cap.^{xii} Furthermore, the federal funding model does not provide funding for the following essential elements: libraries, technology, sports and recreation and languages. In contrast, provincial education systems generally provide these programs and have higher per capita student investment. As a result, the level of post-secondary education between Aboriginal and non-Aboriginal people continues to be wide, especially as it relates to university attainment.^{xiii} In 2006, approximately 60% of Aboriginal youth aged 20-24 living on reserve had not obtained a high school diploma or certificate, a rate that has not improved over the last decade and is four times higher than that of non-Aboriginal youth in Canada.^{xiv} Post-secondary attainment is a major determination for household income, life chances and for breaking cycles of poverty and is best addressed by ensuring culturally relevant education starting at the earliest stages.

The Aboriginal Head Start on Reserve program is positive, but has limited reach. It could make a greater contribution to school success if it was expanded and improved in the following areas: increased reach to all children who could benefit from it, inclusion of children with special needs, recruitment and retention of qualified staff, and addressing issues related to high workloads and turnover.

References and Recommendations from CCRC Alternative Report, *Right in Principle, Right in Practice*:

- Best Interests of the Child and Recommendation 2, page 6-7
- Vulnerable Children and Recommendations, page 38-39
- Recommendation 4, page 44
- Right to an Education and Recommendation 4, page 45-46
- Children's Right to a Family, Identity and Culture, page 56, Recommendation 4, page 58
- Fulfilling the Rights of Aboriginal Children, page 61-64
- Protecting the Rights of Children in Government and Alternative Care, page 65-71

11. *Please provide information on specific measures taken to reduce inequities affecting*

children belonging to minorities and other groups of children in vulnerable situation, such as Roma children, Afro-Canadians, refugee and migrant children, at national, provincial and territorial levels.

Summary: In addition to information in the Alternative Report, the CCRC would like to inform the UN Committee of emerging issues that affect minority children involved with the immigration and refugee system. See detailed research and analysis below.

Recommendations:

- 11.1 The Immigration and Refugee Protection Act (IRPA) should be amended to consider the best interests of the child as a priority, in *all* decisions affecting all asylum-seeking children.
- 11.2 A “Best Interests of the Child” Determination (BID) process should be developed, based on international standards, and consistently applied for all asylum-seeking children and reviewed in all decisions affecting children throughout the immigration and refugee process (e.g., from intake, to hearings, returns, etc.).
- 11.3 Given Canada’s failure to implement previous suggestions for a national strategy for separated and unaccompanied children, the Committee should consider providing more detailed guidance on what such a strategy should include, such as: guidelines on the treatment of separated and unaccompanied children from point of entry through to settlement or return; a guarantee that it will be applied in all parts of Canada, and provisions to ensure that child welfare protection is available for children up to age 18 in all jurisdictions. It should include Designated Representatives and guardians, and access to provincial/territorial Child and Youth Advocates to address administrative barriers to enrolment in school, corrections of identity documents, and other common rights concerns.
- 11.4 The federal government should establish alternatives to detention for asylum-seeking children and families, such as community facilities with particular controls, which research and practice demonstrate to be effective in other countries such as Sweden and Australia. A process should be developed to demonstrate that alternatives to detention of children and children with their parents have been explored and exhausted before detention is applied. An independent monitor is needed to report on the frequency of child detention and the conditions of children in detention, as well as the use of age determination assessments.
- 11.5 Canada should be asked to provide an annual public report on the times to process family reunification applications that implicate children, in different parts of the world and for different groups; as well as the rates of acceptance.

Research and Analysis:

Best interests of the child in immigration processes: The best interests principle is partially recognized in legislation affecting asylum-seeking/refugee children, and it is inconsistently applied in practice.

The 2002 Immigration and Refugee Protection Act (IRPA) introduced an obligation for decision-makers to take the best interests of the child into consideration in particular contexts.^{xv} The act also stated that it is to be “construed and applied in a manner that [...]

complies with international human rights instruments to which Canada is signatory.”^{xvi} This includes the Convention on the Rights of the Child. A decade later, there remain troubling gaps:

- IRPA calls for the best interests of the child to be considered only in certain, specific contexts rather than in all decisions affecting children, as required by the Convention on the Rights of the Child. The Canadian government regularly argues in court that the best interests of the child should not be considered in situations other than those specified in the Act.^{xvii}
- While the Convention states that children’s best interests must be a “primary consideration,” the Act only requires that they be “taken into account.”
- Even where best interests are taken into account, decision-making is inconsistent due to variations in the understanding and application by immigration officers. The evaluation of children’s best interests in Humanitarian and Compassionate applications is sometimes confused or incomplete, incorrectly weighed, or even completely absent (particularly in decisions at overseas visa offices).^{xviii}
- Canada lacks an adequate returns policy to ensure that children are not removed to a situation where they may be unsafe.^{xix}

Discrimination between groups of asylum-seeking children: Discrimination between groups or categories of asylum-seeking children and certain ages of children will increase with the recently adopted Bill C-31. Currently, unaccompanied and separated children in some provinces, such as Ontario (among the largest recipients of such children) are entitled to child welfare protection only up to age 16, leaving 16 and 17-year olds without such protection. Bill C-31 will discriminate in the provision of rights for 16- and 17-year olds designated in the new class of “Designated Foreign Nationals” by automatically detaining them for a minimum of two weeks, followed by a review at six months (children under 16 who are accompanied will either be de facto detained or separated from family and placed in child welfare); by denying family reunification application for a minimum of five years; and by other measures. It also creates a class of Designated Countries of Origin, from which children seeking asylum will be denied a range of protections.

National strategy for unaccompanied and separated children: There are guidelines and training on particular practices for particular stages or aspects of treatment of children on the move, but there is no *comprehensive, national* strategy or policy for migrant children, nor specifically for unaccompanied and separated asylum-seeking children. There are protocols and practices in some particular ports of entry and in some provinces, but no overarching set of principles, guidelines and practices from point of entry to settlement or removal, from coast to coast.

For example, there is no common approach to how and when a Designated Representative is identified and a guardian is established. A Memorandum of Understanding in Ontario addresses two particular points of entry. This does not constitute a standard, universal arrangement.

Detention of asylum-seeking children: CBSA procedures state:

“Where safety or security is not an issue, the detention of minor children is to be avoided whether unaccompanied or accompanied by a parent or legal guardian. For unaccompanied minors, the preferred option is to release them with conditions to the care of child welfare agencies, if those organizations are able to provide an adequate guarantee that the minor child will report to the immigration authorities as requested. If the presence of smugglers or traffickers is a concern, the matter must be discussed with the child protection officers to ensure that adequate protection is provided and that the risk of flight in these situations is mitigated.”

There is considerable ambiguity in the reasons for which children can or should be detained. Since 2007, the number of children detained in CBSA detention centres has decreased, according to government statistics, but for 2010-2011, 227 minors were detained for an average duration of 6.1 days. This is more than would be expected if the application of detention (including de facto detention of minors with detained parents) were only used as a measure of last resort. Canada reviews all detentions at 48 hours, 7 days and every 30 days thereafter, so without a child-specific detention review policy, some children will remain in detention for long periods - between 30-day reviews. Bill C-31 will increase the detention of a new category of Designated Foreign National children: those aged 16 and older will be automatically detained for two weeks, with a subsequent six-month review. Those under 16 will either be de facto detained with parents or separated and placed in child welfare.

Children (like adults) are sometimes detained on the basis of identity. The law gives the government an unreviewable right to detain someone based on an assessment that a person’s identity has not been satisfactorily established.^{xx} Sometimes there are obvious alternatives that are not explored, such as staying with a family member already in Canada.

Usually, children are de facto detained with parents because there are no appropriate alternatives. Because the law does not list best interests of the child among the factors to be considered in the review of detention of adults, arguments based on the best interests of children are routinely dismissed in such cases.^{xxi}

Once detained, immigration officials do not always give priority to resolving the cases of detained children; the Immigration and Refugee Board has sometimes criticized the lack of urgency accorded to these cases by officials.

Family reunification: Despite repeated calls by the UN Committee on the Rights of the Child for Canada to meet its obligations for timely family reunification, delays and barriers to family reunification continue to be a problem, affecting thousands of refugees

and immigrants. Bill C-31 introduces new measures to delay family reunification for Designated Foreign Nationals, a group of asylum-seekers who will be ineligible to even *apply* for family reunification for five years *after* acceptance as Permanent Residents.

Vulnerable Ethnic Groups: The situation of vulnerable groups of children on the basis of ethnicity (e.g., Roma children, African-Canadian children) is a broad and complex question, with considerable local and provincial variation. Generally, Canada's education, health and social protection systems support the social and economic integration of children from diverse ethnicities over the first generation, following some initial administrative barriers to entry. In some parts of Canada, persistent low-income status for particular ethnic groups is an endemic problem. For Aboriginal children, there is a distinct set of issues related to their legal status and the fiduciary responsibilities of different governments.

References and Recommendations from CCRC Alternative Report, *Right in Principle, Right in Practice*:

- Non-discrimination, page 5-6
- Best Interests of the Child, page 6-7
- Right to be Heard and Participate, page 9-10
- Child Impact Assessment, page 12
- Vulnerable Children, page 38, Recommendation 1, page 39
- Protecting the Rights of Immigrant and Refugee Children, page 71-75

12. *Please inform whether there has been progress in ensuring that all provinces and territories have adapted their adoption legislation to the 1993 Hague Convention on the protection of children and co-operation in respect of intercountry adoption.*

Summary: Rule and procedures vary between provinces, resulting in inconsistent implementation of the Hague Convention. Of equal concern is the high number of domestic children waiting for adoption to have a permanent home.

Recommendation:

12.1 An independent, international review of Canada's implementation of the Hague Convention should be done to examine compliance and inequities, relationships with sending countries and appropriate protective frameworks, outcomes for internationally adopted children, preparation of parents to adopt internationally and the relationship between intercountry and Canadian domestic adoption.

Research and Analysis:

Responsibility for the implementation of the Hague Convention is shared between the federal government and the provinces and territories. Each provincial and territorial jurisdiction has its own adoption process, eligibility criteria, rules, legislation and administrative structure, including how private agencies are licensed and operate. For example, there are differences across the provinces/territories in whether single males and females can adopt children. There is evidence that discharge of legal and administrative duties of this "system" as it works for intercountry adoption should be reviewed for

compliance not only with the Hague Convention, but also with the Convention on the Rights of the Child.

The high percentage of adoptions that are intercountry (46%) relative to domestic (54%) is a concern that should be investigated. A March 2012 House of Commons report indicated that Canada has a very high rate of domestic children eligible for adoption who go without permanent family arrangements: “there is a serious adoption problem in Canada. Numerous witnesses stated that an estimated 30,000 children are in the care of child welfare agencies waiting to be adopted. It is estimated that only 2,000 children and youth are adopted each year from the public system.”^{xxii} In 2010, there were 1,946 intercountry adoptions, close to the rate for domestic adoption. The House of Commons report recommended certain measures to facilitate domestic adoption, but did not address any measures in relation to intercountry adoption, except better information to facilitate the process for Canadian parents, which is counter to the core concerns addressed in the report in relation to supporting adoption for more domestic children. Instead, government witnesses focused on the “demand” for children adopted internationally, characterizing the process as “complicated and lengthy” and “fraught with unexpected financial, cultural, legal and other considerations.”

A review of Canada’s compliance should also investigate Canada’s relationships and responses with countries that are non-signatories to the Hague Convention and/or where evidence indicates concerns about illegal international adoption practices in those countries. Canada continues to receive a high number of internationally adopted children from non-signatory countries. Canada has historically suspended international adoptions from some countries on the basis of such concerns through moratoria and in some cases instituted bilateral agreements to “regulate” intercountry adoption, but it should provide much stronger support to sending countries to promote their capacity to ratify and implement the Hague Convention.

In the immediate aftermath of the 2010 massive earthquake in Haiti, some aspects of Canada’s response to expedite intercountry adoptions were contrary to the proper implementation of international legal duties and norms. A 2010 review by International Social Services (ISS) found that 203 children were transferred to Canada, some as young as three months old.^{xxiii} At least 68 children were at the very beginning of the adoption process prior to the earthquake, and not all children had an adoption judgment. The ISS review identified breaches of national Haitian laws since children 16 years and older were adopted out of Haiti; some children lacked the required provincial/territorial government approval for adoption; and some children were not matched with a family in Canada before the earthquake in Haiti.

Legislative reforms to the Citizenship Act, which came into force on December 23, 2007, created a new process for children adopted abroad to enter Canada: the citizenship process (also known as the direct route to citizenship). Adoptive parents continue to have the option of sponsoring their child to come to Canada as a permanent resident, and then apply for citizenship. The concern with the latter is that the adoption is processed before citizenship is ensured, potentially rendering a child stateless in the interim.

The “direct route” of the citizenship process is also problematic. Changes to the same law in 2009 introduced a restriction on the transmission of citizenship by descent - it can only pass automatically to the first generation born or adopted abroad. Section 3(1) of the Citizenship Act provides that a child born or adopted abroad with at least one Canadian citizen parent will receive citizenship by descent directly. Bill C-37, An Act to amend the Citizenship Act, which came into force on April 17, 2009, introduced a second-generation cut-off for Canadian citizenship by descent. Now under section 3(3) of the Citizenship Act, Canadian parents born or adopted from outside Canada who obtained citizenship directly cannot pass on citizenship directly to their children born abroad. Therefore, internationally adopted children who enter Canada through the direct citizenship route are discriminated against as far as their ability to pass their citizenship to their children born abroad, compared to children who are born in Canada or enter Canada through the immigration process and obtain citizenship in Canada.

The Citizenship Act now creates two classes of citizens and treats them differently. It treats those who were born in Canada and those who are naturalized in Canada equally, as far as their ability to pass on citizenship goes. If their future children are born abroad, they are citizens.

The law treats equally those who are born to Canadians abroad and those who are adopted abroad who go through the direct route to citizenship. But these two kinds of citizens are not provided the same rights to citizenship as the two types described above.

The Government of Canada rationalizes this discrimination as minimizing the difference in treatment between children born abroad to Canadians and children adopted abroad by Canadians who access citizenship through the direct route. The Government has stated that these two groups are treated equally in the sense that they’re both impacted by the first-generation limit. In effect they are equally denied their rights, which is unacceptable, and may create stateless children in the future. The Government feels it has addressed the concerns about this discriminatory treatment by improving the information available on its website on the different routes for an adopted child to enter Canada.

The Hague Convention must be implemented through the lens of the Convention on the Rights of the Child, ensuring children’s best interests are a higher priority in all decisions and that no discrimination is perpetuated by inequities in provincial/territorial legislation or by federal citizenship laws and regulations.

References and Recommendations from CCRC Alternative Report, *Right in Principle, Right in Practice*:

- Best Interests of the Child, page 6-7
- Children’s Right to Family, Identity and Culture, page 57-60

13. *Please inform the Committee whether application of the Youth Criminal Justice Act is uniform in all provinces and territories and whether there are protection gaps especially regarding adult sentences for children 14 to 15 years of age. Please also*

inform the Committee on the current status of Bill C-10, the Omnibus Crime Bill, intended to amend the Youth Criminal Justice Act, as well as provide information on how this draft is consistent with the State Party's international obligations under the Convention.

Summary: The current Youth Criminal Justice Act is not applied uniformly across provinces, including differences in the minimum age for use of adult sentences. More importantly, the amendments passed in Bill C-10 violate several provisions in the Convention and will erode progress that was being made in the effective use of alternative measures. Recent amendments will increase the use of detention for a wider range of offenses and remove the ban on publication of the names of young offenders.

Recommendations:

13.1 The committee should insist on seeing the government's assessment of Bill C-10's compliance with the Convention, review the matter carefully, and provide clear and specific guidance on how the proposed amendments fulfill or fail to fulfill Canada's obligations under the Convention.

13.2 The committee should encourage Canada to place a moratorium on proclamation of the sections of Bill C-10 that relate to the youth justice system, expand the use of good practices in alternative measures that have been developed under the current Youth Criminal Justice Act, and fully implement its provisions prior to a full review and then revision, based on evidence of what is effective for both public safety and the rehabilitation and reintegration of youth in conflict with the law.

Research and Analysis:

Many of the amendments to the Youth Criminal Justice Act in Bill C-10, which passed in March, are not compliant with the Convention on the Rights of the Child. They erode consideration of the best interests of children in favour of deterrence and denunciation, and increase the use of detention contrary to articles 40(3.b) and 37(b). New rules for publication of names violate provisions of articles 40 (2,vii), 16, and others. The changes will have a disproportionate impact on Aboriginal children, who are already significantly overrepresented in the youth criminal justice system (articles 2, 30). The changes are widely held to jeopardize emerging successes in rehabilitating children in conflict with the law through alternative measures consistent with these articles of the Convention and with other UN Committee and UN norms.

The 2003 Youth Criminal Justice Act was an advancement over the former Young Offenders Act, but still included measures that are inconsistent with the Convention (the provision of adult sentences to 14-16 year olds in some circumstances, the incarceration of children with adults, and the lifting of publication bans in some instances). Currently under the act, judges may impose adult sentences on youth 14-16 years of age (depending on the province/territory) convicted of serious violence offences. However, the Crown does not always apply for an adult sentence in such cases, and is not required to consider doing so.

Bill C-10 sets out a number of amendments to the 2003 Youth Criminal Justice Act (YCJA) that increase the conditions in which detention will be used, the duration of detention and the application of adult sentences, contrary to article 40(3) and 37(c)^{xxiv}. It would *require* the Crown to consider seeking an adult sentence for youth convicted of a “serious violent offence” – that is, murder, attempted murder, manslaughter or aggravated sexual assault. The Crown would also be required to inform the court if they chose not to apply for an adult sentence. Currently under the act, when an adult sentence is imposed on a youth, the publication ban is automatically lifted. The court can also consider lifting the ban when the Crown applies for it (if the Crown had sought an adult sentence and a youth sentence was imposed instead). Bill C-10 would *require* judges to consider lifting the name publication ban for youth convicted of a violent offence and given a youth sentence, “when the protection of society requires it”^{xxv}. These conditions are contrary to article 40 (2.vii) and 16, among others.

Bill C-10 amends section 115(1.1) of the YCJA to make it mandatory for the police to “keep a record of any extrajudicial measures that they use to deal with young persons”. This is a significant change from the existing situation where the police exercise discretion in making that determination. This amendment undermines the integrity and intent of the provisions for extrajudicial measures and will send a mixed message to police forces. It may suggest to individual officers that these measures are being used too frequently, and result in less use. Some predict it will mean fewer young people choose alternative measures in the hopes of avoiding a conviction and record through lengthy court processes, which teach young people more about avoiding conviction than taking responsibility for their actions. The changes clearly violate article 40(3.b) and 37(c).

Further, Bill C-10 amends section 39(1) of the YCJA to add an additional category where a custodial sentence may be imposed if “the young person has committed an indictable offence for which an adult would be liable to imprisonment for a term of more than two years and has a history that indicates a pattern of either extrajudicial sanctions or findings of guilt or both under [the Youth Criminal Justice Act] or the Young Offenders Act...” Under this amendment, a court could impose a custodial sentence on a young person, taking into account previous extrajudicial sanctions, whereas at present it can take into consideration only previous convictions. This change is contrary to a directive on the subject issued by the Committee on the Rights of the Child, in its General Comment No. 10. The Committee defined ‘diversion’ as “measures for dealing with children, alleged as, accused of, or recognized as having infringed the penal law without resorting to judicial proceedings” and stressed that an admission by a child in a diversion context will not be “used against him/her in any subsequent legal proceeding”.

As of the time of this analysis, these amendments had not been proclaimed, although the Bill received Royal Assent. There are a few positive changes contained in Bill C-10, such as recognizing nominally the principle of diminished moral blameworthiness or culpability (proposed amendment to section 3(1.b) of the YCJA) and the prohibition against youth serving time in adult prisons (proposed amendment to section 76(2) of the YCJA). The majority of amendments to the YCJA present serious problems.

It is widely agreed across Canadian civil society (including legal, penal and child-service experts) that these changes are a significant step away from a restorative and rehabilitative justice model and will incarcerate more youth for far less serious crimes, in contravention of the Convention on the Rights of the Child and other international juvenile justice norms. A recent set of cross-country roundtable discussions on youth justice was ignored in the formulation of these amendments but had concurred that the YCJA is working as it should in many respects, and further improvements must focus not on the legislation but on the related services and systems such as youth mental health, early risk intervention and the expansion and effective functioning of alternatives to incarceration. They must come from fixing the system behind the law, before and after youth come into contact with the justice system.

References and Recommendations from CCRC Alternative Report, *Right in Principle, Right in Practice*:

- Best Interests of the Child, page 6-7
- Child Impact Assessments, page 12
- National Children's Advocate, page 15
- Recommendation 2, page 28
- Children's Right to Age-Appropriate Forms of Criminal Justice, page 49-51

14. *Please inform the Committee on the current status of Bill C-4, on Preventing Human Smugglers from Abusing Canada's Immigration System Act, as well as provide information on how this draft is consistent with the State Party's international obligations under the Convention.*

Summary: Bill C-31, including the former Bill C-4, was rushed through parliament at the end of the spring session in 2012. Many of the provisions of Bill C-31 violate Canada's international human rights obligations, including those in the Convention.

Recommendation:

14.1 A child rights impact assessment is needed for Bill C-31, with a commitment to amend provisions found to be contrary to the Convention.

Research and Analysis:

Protecting the integrity of Canada's immigration system and eliminating human smuggling are legitimate goals, but they do not require violating Canada's international human rights obligations. Many of the provisions of Bill C-31 do violate important international norms, especially for children.

Under the proposed amendments, the Minister of Public Safety has a broad discretion to designate certain groups - including families and children 16 and older arriving in Canada - as Designated Foreign Nationals if the Minister either has "reasonable grounds to suspect" they were smuggled or thinks examination of the group's members cannot be conducted in "a timely manner." Many of the provisions of Bill C-31 will be harmful to these children and their families.

1. Bill C-31 imposes an automatic, lengthy period of detention upon “designated” asylum claimants that will have negative impacts on children: These parents and children who are 16 and 17 years of age (and possibly younger children for whom there is an age determination question) will be subject to automatic and warrantless mandatory detention. The bill originally stipulated a judicial review would only be provided after Designated Foreign Nationals had been in detention for one year. An amendment to the Bill introduced a 14-day and then a six-month review of the detention of the "mass arrivals" refugees. This is in contrast to all other refugee claimants who have a right to be brought before an independent decision-maker within 48 hours of being detained.

2. Bill C-31 imposes mandatory detention for 16 and 17 year old children designated as irregular arrivals and will likely prevent them from being placed in an appropriate facility with parents: As is the current practice, men and women would likely be locked up in gender-segregated immigration detention facilities or in regular jails, while their 16- and 17- year old children would also be placed in automatic mandatory detention. So, these children would likely end up in the same facility with one parent, but not with both parents.

4. Bill C-31 will, in its implementation, result in children designated as ‘irregular arrivals’ who are under 16 years of age being placed in ‘de facto’ detention with a parent of the same gender or referred to child welfare authorities, with risks occurring in either scenario: In the case of children who are 15 and under and whose parents have been detained, they are faced with two scenarios that violate their rights, in that they can either be placed in de facto detention with one of their parents in a detention facility, where there are serious mental health risks, such as recurring nightmares, depression, self-harm, suicide and Post Traumatic Stress Disorder, or alternatively, they can be placed in the care of child welfare authorities, where there are the risks of separation anxiety, language and cultural disruption, multiple placements, attachment disorders, and insufficient access/communication with parents and siblings.

5. Bill C-31 fails to protect asylum-seeking children from inappropriate age assessment procedures: Children of various ages may be exposed to inappropriate age assessment procedures to determine if they are under age 16 and immune from mandatory detention and eligible for admission to child welfare care. Medical assessments - including magnetic resonance imaging, bone and dental radiology and examinations of sexual maturity – have been found to be both invasive and inaccurate, but yet Bill C-31 provides no guidance on this subject.

6. Bill C-31 deprives ‘irregular arrival’ refugees of the right to apply for permanent residence and seek sponsorship of their children/spouse left behind in their home country for a five year period, thereby impeding family reunification: Under Bill C-31, persons whose refugee claim is accepted, if they were part of a designated group, will not be able to bring to Canada a child or spouse left behind for many years. Even if Canada has recognized these individuals as legitimate refugees, they will be denied the ability to apply for permanent resident status for a minimum period of 5 years following their acceptance (which could take up to two years). Permanent resident status is a

necessary step to sponsoring a close family member. Critical years in child development would pass, with the prolonged risks associated with family separation.

7. Bill C-31 allows ministerial discretion to create a class of Designated Countries of

Origin: Bill C-31 gives the Minister of Public Safety broad discretion to designate refugee source countries as “safe”, despite the “differential risks” faced by certain minorities in a country that may be safer for some children and their families than others, such as Roma. This will provide insufficient time to prepare one’s refugee claim and deny access to appeal of a negative decision.

References and Recommendations from CCRC Alternative Report, *Right in Principle, Right in Practice*:

- Best Interests of the Child, page 6-7
- Child Impact Assessments, page 12
- National Children’s Advocate, page 15
- Recommendation 2, page 28
- Protecting the Rights of Immigrant and Refugee Children, page 71-75
- National Children’s Advocate, page 15
- Protecting the Rights of Young Soldiers, page 79-82

15. *Please provide information on progress in implementing this Committee’s recommendations in its previous Concluding Observations regarding the implementation of the Optional Protocol on the involvement of children in armed conflict, especially regarding extra-territorial jurisdiction and age of voluntary recruitment. Please also provide updated information regarding the case of Omar Khadr.*

Summary: Canada has taken no steps to introduce extraterritorial jurisdiction. Its policy on age of voluntary recruitment has not changed since the first review of OPAC. Practices that facilitate the entry of 16- and 17-year-olds to military training remain a concern; these include an advertising campaign in movie theatres and high school cooperative education courses where students complete a recruitment application, undertake military training, and receive high school course credits.

Recommendation:

15.1 The committee should ask for and review the government’s rationale for not complying with its earlier plea agreement and the ruling of the Supreme Court of Canada. Based on its own review of the matter, the committee should hold Canada accountable for its failure to comply with the provisions of the Convention and the OPAC in this case and press for immediate action to return Omar Khadr to Canada. This case warrants specific attention by the committee because it also has international impacts for implementation of the OPAC and the treatment of other detainees in Guantanamo Bay.

Research and Analysis:

The case of Omar Khadr raises significant questions about implementation of the OPAC in Canada. Although he fit the definition of a child involved with an armed group under the OPAC and the Paris Principles for Children Associated with Armed Groups, he was

denied protection because he was labeled a “terrorist”. In January 2010, the Supreme Court of Canada declared that Canadian government conduct violated the rights of Omar Khadr and did not conform to the principles of fundamental justice, on the basis that he was 16 years old at the time and had not received access to counsel or to any adult who had his best interests in mind. The Court further held that “Canada’s participation in the illegal process in place at Guantanamo Bay clearly violated Canada’s binding international obligations.” In October 2010, during a trial in Guantanamo that also violated principles of fundamental justice, a plea agreement was reached by all parties. It provided that, in exchange for pleading guilty, Omar Khadr would spend one more year in prison in Guantanamo and then be transferred to Canada. In June 2012, US and Canadian lawyers for Omar Khadr reported that they had made all the appropriate applications and fulfilled all the legal requirements, but the government of Canada would not fulfill its part of the agreement and return Omar Khadr to Canada. In July 2012, lawyers acting for Omar Khadr appealed to the Federal Court of Canada to order the government to make a decision on his application for transfer to Canada.

References and Recommendations from CCRC Alternative Report, *Right in Principle, Right in Practice*:

- Best Interests of the Child, page 6-7
- Child Impact Assessments, page 12
- National Children’s Advocate, page 15
- Protecting the Rights of Young Soldiers, page 79-82

Part II

Brief update (no more than three pages in length) on the information presented in its report regarding:

- (a) New bills or enacted legislation and any accompanying regulations;

A considerable number of legislative changes have focused on protecting children from sexual exploitation and abuse, with varying impacts on their rights and protection. Examples of changes include raising the age of sexual consent from 14 to 16 (with a close-in-age exemption of five years); introducing mandatory minimum sentences for a variety of sexual offences against children; and introducing a number of legislative amendments to criminalize online abuse such as the luring of children for the purpose of sexual exploitation. At the provincial/territorial level, there has notably been some stronger legislation to establish or empower Provincial Child and Youth Advocates (question #7) and some progress to advance children’s best interests and participation in family law and child welfare law, though in practice there remain many challenges (question #8).

A second Private Member’s Bill to establish a Commissioner for Children and Young Persons in Canada, Bill C-420, was introduced in May 2012 and had its first reading. Some federal and provincial/territorial legislation has regressed children’s rights, as exemplified with the changes to the Citizenship Act described in question #12, to the YCJA (question 13) and IRPA (questions 12 and 15).

Some legislative responses to the risk of online exploitation, such as cyber bullying, demonstrate an overreliance on legal sanctions. Expert witnesses, for a current study on cyber bullying conducted by the Standing Senate Committee on Human Rights, point out that the rights of children can be abrogated by unnecessarily bringing more children into conflict with the law. More children are coming into conflict with the law for sharing sexual images of each other in “sexts” and some new legislation targeting bullying is expected to bring more legal consequences for more children. These trends highlight the need for robust Child Rights Impact Assessments of all legislation affecting children, as recommended by the CCRC, the UN Committee, and the Standing Senate Committee on Human Rights. It also underlines the need to balance a punitive approach to child protection with a stronger focus on prevention.

References and Recommendations from CCRC Alternative Report, *Right in Principle, Right in Practice*:

- Best Interests of the Child, page 6-7
- Right to be Heard and Participate, page 9-10
- Child Impact Assessments, page 12
- National Children’s Advocate, page 15
- Recommendation 2, page 28
- Children’s Right to be Free from Violence, page 29-32
- Children’s Right to be Free from Exploitation in the Workplace, page 34-35
- Children’s Right to be Free from Sexual Exploitation, page 36-37
- Children’s Right to Access Information, page 47-49

(b) New institutions, their mandates and funding;

Rather than new institutions, budget cuts since the earlier CCRC alternative report have eliminated institutions and programs that contributed to the fulfillment of children’s rights. Of particular concern are: (1) the elimination of the government-appointed National Council on Welfare, which provided statistical data and analysis on child poverty that civil society groups could not obtain otherwise; and (2) the elimination of the human rights education and awareness program under Heritage Canada, which supported small initiatives to improve public awareness about children’s rights.

In addition, funding cuts to a number of Aboriginal organizations that worked on social policy and prevention of violence mean reduced public attention to health and violence prevention among aboriginal peoples.

(c) Newly adopted and implemented policies and programmes and their scope;

Changes in Health Care for Asylum-Seeking Children

Since the CCRC’s alternative report, a new federal policy change has been introduced with significant impacts on refugee and asylum-seeking children and their parents. Changes to the **Interim Federal Health Program** as of June 30, 2012 alter the eligibility

and greatly reduce the benefits the program provides for health care coverage to refugees sponsored by the private sector (as opposed to government-assisted refugees, a minority of the total), refugee claimants, rejected refugee claimants and certain other persons detained under the Immigration and Refugee Protection Act. Since 1975, the federal department of Citizenship and Immigration Canada (CIC) has provided temporary health-care coverage to such persons until they are eligible for provincial/territorial health insurance or they are removed from Canada.

The main changes include the elimination of coverage for dental care, vision care, ambulance services, mobility devices, psychological counseling provided by a registered clinical psychologist, routine care outside hospital and pharmacy care for all privately-sponsored refugees and refugee claimants from non-Designated Countries of Origin (described above). The excluded services for most groups include, for example, prenatal check-ups, medication and delivery, insulin to treat diabetes, eyeglasses, cavity fillings, emergency surgery for heart attacks, and treatment for injury, epilepsy, childhood respiratory illnesses and cancer. They will be provided health care coverage only for urgent and essential health care services or for conditions deemed to pose a risk to public health or public safety. Refugee claimants from Designated Countries of Origin and rejected refugee claimants will only be eligible for health coverage needed to prevent or treat a disease posing a risk to public health or safety (such as tuberculosis, HIV and mental disorders with psychotic symptoms). Applicants for Pre-Removal Risk Assessment who have not made a refugee claim and refugee claimants who have withdrawn or abandoned their claim or who have been found not eligible will receive no benefits. For some, the period for which they are covered only by the IFHP is a few months before eligibility for provincial programs; for others, such as rejected claimants who cannot be returned for security or other reasons, it may be much longer.

There has been broad objection to the policy change from the medical community, provincial and territorial governments and others, on human rights grounds and on cost-benefit analysis. Children seeking asylum will be directly affected (there is no exception or exemption for children) and will also be affected by their parents' health status. There was apparently no Child Rights Impact Assessment applied to this policy change. This is another example of the dire need for improved legal and administrative governance processes for children's rights.

References and Recommendations from CCRC Alternative Report, *Right in Principle, Right in Practice*:

- Best Interests of the Child, page 6-7
- Child Impact Assessments, page 12
- National Children's Advocate, page 15
- Recommendation 5, page 44

Changes in Right to Information about Biological Parents

The CCRC alternative report addresses issues related to the right of adoptees to access information about their biological parents.

Since the CCRC's report to the Committee, it has come to our attention that complaints to different UN bodies have raised the issue that unwed mothers in Ontario had been denied the right by social and health care workers to name the father on their infant's birth certificates before they were filed with the Registrar General, as outlined in the 2003 Report of the Special Rapporteur on violence against women, its causes and consequences (E/CN.4/2003/75/Add.2, 14 January 2003). Since then, the government has not taken steps to restore paternal identity where this has been requested. Requests by affected parents to apply the child's paternal identity were made before a 2005 amendment to the Vital Statistics Act, which provides that original birth registrations cannot be amended when an adoption has occurred.

Children have the right to know the identity of their natural/biological parents. The original birth registration documents should be available to children (including adopted children) and amended to include all available identity elements, regardless of when the elements of identity have been omitted or removed.

References and Recommendations from CCRC Alternative Report, *Right in Principle, Right in Practice*:

- The Right to Identity, page 59
- Recommendation 5, page 60

(d) Newly ratified human rights instruments.

Since Canada's 2009 report to the UN Committee on the Rights of the Child, the following instruments were ratified:

Convention on the Rights of Persons with Disabilities (2010)

Declaration on Rights of Indigenous Peoples (2010)

ⁱ AN ACT TO ENACT THE JUSTICE FOR VICTIMS OF TERRORISM ACT AND TO AMEND THE STATE IMMUNITY ACT, THE CRIMINAL CODE, THE CONTROLLED DRUGS AND SUBSTANCES ACT, THE CORRECTIONS AND CONDITIONAL RELEASE ACT, THE YOUTH CRIMINAL JUSTICE ACT, THE IMMIGRATION AND REFUGEE PROTECTION ACT AND OTHER ACTS

ⁱⁱ As of June 2012, the Government of Quebec has officially recognized the customary rules of adoption of the First Nations and Inuit. A Bill was tabled to modify the Quebec Civil Code to recognize the legality of Aboriginal customary adoption. The recognition of the customary rules of adoption set out in the Bill dealing with adoption and parental authority is a direct result of the "Report of the Working Group of Aboriginal Customary Adoption", tabled on April 16, 2012, which stated: "In the Aboriginal tradition, the historical actions of various authorities were hardly propitious to the development of customary adoption. However, its very survival demonstrates clearly the resilience of this practice. Furthermore, it is a real and contemporary expression of the uniqueness of Aboriginal cultures." Consultations were held in Aboriginal communities to document the status of customary adoption and to clarify how this practice could be integrated into legislation. The Bill states specifically that "the conditions of any Aboriginal custom in Quebec which is in harmony with the principles of the interest of the child, of the respect of his or her rights and of the consent of the parties involved, may replace the conditions for adoption set out in the law". This legislative amendment will grant the right to families who have adopted a child under customary rules to exercise all parental authority just as any other parent who has adopted a child according to the pre-existing legal regime, advancing non-discrimination in law and practice.

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- ⁱⁱⁱ Canadian Coalition for the Rights of Children. "The Voice of the Child in Family Law," in *Best Interests of the Child: Meaning and Application in Canada*; conference report, pp. 24-31. Available at <http://www.rightsofchildren.ca>.
- ^{iv} *B.J.G. v. D.L.G.*, 2010 YKSC 44
- ^v Children's Right to be Heard in Canadian Judicial and Administrative Proceedings, Justice for Children and Youth, Submission for the Committee on the Rights of the Child General Day of Discussion
- ^{vi} Aboriginal Children's Health: Leaving No Child Behind, UNICEF Canada (2009), http://www.unicef.ca/sites/default/files/imce_uploads/DISCOVER/OUR%20WORK/ADVOCACY/DOMESTIC/POLICY%20ADVOCACY/DOCS/Leaving%20no%20child%20behind%2009.pdf
- ^{vii} Health Canada website, <http://www.hc-sc.gc.ca/fniah-spnia/promotion/suicide/index-eng.php> (accessed June 25, 2012)
- ^{viii} This lack of coverage could be seen as the greatest gap to be filled as indicated in, "Aboriginal Maternal and Infant Health in Canada: Review of On-Reserve Programming", Stout, R. and R. Harp (2009) Additionally, the First Nations Education Council in 2009, recommended a 110% increase (at least \$997 million) in annual Aboriginal education funding across Canada, see, Paper on First Nations Education Funding, First Nations Education Council, page 41 (February 2009). http://www.cepn-fnec.com/PDF/etudes_documents/education_funding.pdf
- ^{ix} Stout, R and R. Harp, "Aboriginal Maternal and Infant Health in Canada: Review of On-Reserve Programming", page 41 – 42 (2009)
- ^x See, for example, "Aboriginal Children and Youth with Complex Health Care Needs," Vancouver Island Health Authority, Child Health BC and the First Nations Health Council (2009) and "Birthing Through First Nations Midwifery Care," National Aboriginal Health Organization (2009)
- ^{xi} Regional Portrait of the Special Needs Situation for the First Nations of Quebec Clientele between the ages of 0 to 6 years September (2008) FNQLHSSC, <http://www.cssspnql.com/eng/petite-enfance/documents/rapportfinalbesoinsspeciauxeng.pdf>
- ^{xii} Paper on First Nations Education Funding, First Nations Education Council, page 41 (February 2009), http://www.cepn-fnec.com/PDF/etudes_documents/education_funding.pdf
- ^{xiii} Fact Sheet on First Nations Post-secondary education, Assembly of First Nations (page 1), <http://www.afn.ca/uploads/files/pse-fact-sheet.pdf>
- ^{xiv} Paper on First Nations Education Funding, First Nations Education Council, page 10 (February 2009), http://www.cepn-fnec.com/PDF/etudes_documents/education_funding.pdf
- ^{xv} Immigration and Refugee Protection Act (IRPA) 25(1): applications for humanitarian and compassionate consideration, 28(2)(c): retention of permanent residence despite not meeting the physical residency requirement, 60: detention of children, 67(1)(c): appeal to the Immigration Appeal Division (e.g. of loss of permanent residence or refusal of Family Class sponsorship). For more information on the Act, see CCR report, *Impacts on children of the Immigration and Refugee Protection Act*, November 2004, <http://www.ccrweb.ca/children.pdf>
- ^{xvi} IRPA 3(3)(f).
- ^{xvii} For example, in an application to the Federal Court to stay a person's removal pending consideration of an application on humanitarian and compassionate grounds (H&C), the only recourse in which the best interests of a child affected may be considered in the context of removal. The government has argued that the Act does not direct that the best interests of the child be considered when a removal order is being executed. See also the section on detention below.
- ^{xviii} See CCR, The United Church of Canada and International Bureau for Children's Rights, *The understanding and application of "Best Interests of the Child" in H & C decision-making by Citizenship and Immigration Canada*, September 2008, <http://www.ccrweb.ca/documents/BICreport.pdf>.
- ^{xix} Second report of the UN Committee on the Rights of the Child on Canada, 2003, §47: "Develop better policy and operational guidelines covering the return of separated children who are not in need of international protection to their country of origin." The immigration manual, ENF 10 – Removals, simply states at section 23.6 that arrangements should be made with family representatives or government agencies for reception of the child. <http://www.cic.gc.ca/english/resources/manuals/enf/enf10-eng.pdf>
- ^{xx} The Immigration and Refugee Board can only release a person detained on identity grounds once the Minister decides that identity has been established or if the Board finds that the Minister is not making reasonable efforts to establish identity. IRPA 58(1)(d).
- ^{xxi} For more information on the detention of children, see CCR, *Detention and Best interests of the child*, November 2009, <http://www.ccrweb.ca/documents/detentionchildren.pdf>
- ^{xxii} Federal Support Measures to Adoptive Parents, Report of the Standing Committee on Human Resources, Skills and Social Development and the Status of Persons with Disabilities
- ^{xxiii} Haiti: Expediting intercountry adoptions in the aftermath of a natural disaster, preventing future harm, International Social Services, 2010

^{xxiv} Part 4 of Bill C-10 proposes definitions for two new offences - “serious offences” and “violent offences”. Both definitions would expose too many youths to pre-trial detention and custodial sentences, when the focus of the act has always been on meaningful consequences for the *most violent and habitual* offenders. The proposed designations cast too wide a net. They go far beyond the ostensible aim to control the most violent offenders who pose a risk to themselves or others, by including offences that have not traditionally justified young people being placed in detention or receiving custodial sentences.

“Serious offence” would be defined as “an indictable offence under an Act of Parliament for which the maximum punishment is imprisonment for five years or more.” Examples would include: fraud over \$5000; uttering a forged document; possession of a stolen credit card; obstructing justice; and public mischief. The charging of a young person with a “serious offence” would also become the basis for a young person being ordered into pre-trial detention under the amended section 29(2) of the YCJA. Additionally, the new definition of “violent offence” would be one of the criteria for committing a young person to a custodial sentence under section 42 of the YCJA. It would also become the triggering mechanism for the Court’s mandatory consideration of the appropriateness of lifting a publication ban for a youth found guilty of any ‘violent offence’ under an amendment to section 75 of the YCJA.

In the case of a “violent offence”, a definition had previously been provided by the Supreme Court of Canada in *R. v. C.D.*, where it stated that a ‘violent offence’ is any offence where the youth “causes, attempts to cause or threatens to cause” bodily harm. However, Bill C-10 expands the definition of ‘violent offences’ to include ‘dangerous’ acts, an approach expressly rejected by the Supreme Court of Canada in the same decision. Even if the conduct itself is not violent or does not result in bodily harm, conduct which results in a risk of bodily harm or endangerment would still be classified as a ‘violent offence’ under Bill C-10. This broadened definition, which could lead to a young person’s incarceration, would capture various situations with no intent or awareness of harm. It is easy to imagine scenarios that would result in unfair outcomes for youths.

^{xxv} Bill C-10 amends section 75 of the YCJA to provide that the court “shall decide whether it is appropriate to make an order lifting the ban” on the publication of identifying information for a youth found guilty of any ‘violent offence’. This is a radical change from the current situation where publication of a young person’s identity is restricted to circumstances where an adult sentence is imposed; to temporary circumstances, where, for example, a dangerous youth escapes and must be captured; or a situation where the young person requests publication of his or her own identity. The underlying purpose of the publication ban is to minimize stigma and instead focus on rehabilitation of the young person. This amendment would steer judges away from that focus to more punitive considerations. The kind of stigma and reputation impairment generated by lifting a publication ban of identifying information could lead to the identified youth being adversely affected in terms of future living conditions, education and employment opportunities. It could also contribute to that young person’s depression, self-destructive behaviour and/or reversion to anti-social behaviours and expose other family members to public ridicule. None of this supports the long-term protection of the public, as rehabilitation and reintegration back into one’s home community are made more difficult.