



Canadian Human Rights Commission

**Submission to the Committee on the Rights of the
Child on the occasion of its consideration of Canada's
5th-6th Periodic Reports**

April 2022

© His Majesty the King in Right of Canada,
as represented by the Canadian Human Rights Commission, 2024.

Cat. No.: HR4-111/2024E-PDF

ISBN: 978-0-660-70464-7

TABLE OF CONTENTS

1. THE CANADIAN HUMAN RIGHTS COMMISSION	1
2. VOICES OF CHILDREN (ARTICLES 12, 13)	2
3. CHILDREN WITH DISABILITIES (ARTICLES 2, 3, 6, 17, 23, 24, 28, 29)	3
3.1. Education.....	3
3.2. Access to Supports and Services	5
4. INDIGENOUS CHILDREN (ARTICLES 2, 3, 5, 6-9, 19, 20, 24, 30, 34, 37, 39)	6
4.1. Equitable and Adequate Services	7
4.1. Residential Schools	11
4.2. Suicide Rates for Indigenous Youth.....	12
5. RACIALIZED CHILDREN (ARTICLES 2, 3, 6, 28-30, 37, 40)	13
6. ADEQUATE STANDARD OF LIVING (ARTICLES 4, 24, 27)	15
6.1. Poverty, Food Insecurity and the Right to Adequate Housing.....	15
7. INTERSEX, TRANS AND GENDER DIVERSE YOUTH (ARTICLES 2, 19, 24)	18
8. OTHER ISSUES REQUIRING ATTENTION	21
8.1. Children, Technology and Human Rights (Article 16)	21
8.2. Environmental Concerns (Article 24)	22
9. CANADA’S IMPLEMENTATION OF INTERNATIONAL HUMAN RIGHTS OBLIGATIONS (ARTICLE 4)	24

1. THE CANADIAN HUMAN RIGHTS COMMISSION

The Canadian Human Rights Commission (CHRC) is Canada's national human rights institution. It has been accredited "A-status" by the Global Alliance of National Human Rights Institutions, first in 1999 and again in 2006, 2011 and 2016.

The CHRC was established by Parliament through the Canadian Human Rights Act (CHRA) in 1977.¹ It has a broad mandate to promote and protect human rights. The Constitution of Canada divides jurisdiction for human rights matters between the federal and provincial or territorial governments. The CHRC, pursuant to the CHRA, has jurisdiction over federal government departments and agencies, Crown corporations, First Nations governments and federally-regulated private sector organizations. Provincial and territorial governments have their own human rights codes and are responsible for provincially/territorially-regulated sectors.

The CHRC's efforts to promote and protect human rights include screening and, where possible, mediating discrimination complaints, representing the public interest in the litigation of complaints, developing policy and conducting research in consultation with rights holders and stakeholders, issuing public statements, and tabling special reports in Parliament. The CHRC is committed to working with the Government of Canada as well as domestic and international partners and stakeholders to ensure continued progress in the protection of human rights, including Canada's implementation of the rights and obligations enshrined in the various human rights treaties to which Canada is a party.

The CHRC also conducts compliance audits under the Employment Equity Act (EEA).² The purpose of the EEA is to achieve equality in the workplace so that no person is denied employment opportunities or benefits for reasons unrelated to ability, and to correct the historic employment disadvantages experienced by four designated groups: women, Indigenous peoples, persons with disabilities and racialized people.³

In 2019, the CHRC was mandated with several new responsibilities under the Accessible Canada Act, the Pay Equity Act, and the National Housing Strategy Act. The Commission was also designated as a body responsible for monitoring the Government of Canada's implementation of the United Nations Convention on the Rights of Persons with Disabilities (CRPD), in accordance with article 33.2 of the Convention.

In the spirit of constructive engagement, the CHRC submits this report to the Committee on the Rights of the Child (the Committee) on the occasion of its review of Canada's 5th

¹ Available at: laws-lois.justice.gc.ca/PDF/H-6.pdf. Although Canada's human rights laws are not part of the Constitution, they are considered "quasi-constitutional" in nature, meaning that all other laws must be interpreted in a manner consistent with human rights law.

² Available at: laws-lois.justice.gc.ca/PDF/E-5.401.pdf.

³ The Commission notes that the terms "visible minority" and "Aboriginal" are increasingly outdated, and as such, they are used only to reflect their official usage in Canadian legislation and in Statistics Canada survey data. Where other terms (such as Indigenous or racialized) can be used, the Commission supports this.

and 6th periodic reports. The CHRC celebrates the 30th anniversary of Canada's ratification of the Convention on the Rights of the Child (CRC), and takes this opportunity to both reflect on the progress of children's rights in Canada and to highlight the important gaps and challenges that remain. The CHRC also supports the Sustainable Development Goals and their implementation in Canada, which will have a broad impact on the well-being of children ranging from child poverty to climate change.

2. VOICES OF CHILDREN (ARTICLES 12, 13)

The pandemic has had – and continues to have – a disproportionate impact on marginalized communities and on people living in vulnerable circumstances across Canada, including children and youth. In many cases, the pandemic has exposed and amplified pre-existing inequalities and barriers that have long existed in our society.

The closure of daycares and schools left many children without a safe place, social contact, a sense of normalcy, a nutritious meal, or other critical supports, all of which are necessary for a child's well-being and development. In addition, the continued negative effects on family income, mental health, and the overall economy will all have long-lasting impacts on this generation of children. This is why as we look to recover from the pandemic and aspire to build back better, it is essential for every voice to be heard and included, including the voices of children and youth.

The CHRC recognizes and supports the importance of ensuring children's voices are heard and considered in line with the General Principle of child participation. In its work, the CHRC strives to ensure that the perspectives of children are heard, better understood, and can be acted upon.

Based on previous discussions with organizations from across the country that work with youth, the CHRC wishes to reiterate the following messages pertaining to youth engagement, knowledge and awareness of human rights. Through these various discussions, the CHRC heard that:

- children's rights need to be better incorporated into Canada's governance structures to help lessen the gaps that currently exist;
- the diverse experiences of children in Canada should not be homogenized;
- children should be seen for the potential that they have now, rather than solely for their future potential;
- there are gaps in the education children and youth receive about human rights;
- children and youth observe situations that are unfair and possibly discriminatory, but don't necessarily have the knowledge or skills to do something about it; and
- children and youth must learn about their rights repeatedly, at different levels of their education.

In addition, in order to empower youth to enact change and ensure that youth are better engaged on topics that matter most to them, it is imperative to both treat youth as equals, and create opportunities and spaces for engagement.

Recommendation #1: That Canada increase children’s awareness and understanding of their rights through enhanced efforts. These efforts should include meaningfully engaging a diversity of children across Canada to better understand their views on important human rights issues that directly impact them. Processes should also be put in place to ensure that the views of children are being considered and given due weight in policy decisions that impact their lives, including during the development and implementation of pandemic recovery plans.

3. CHILDREN WITH DISABILITIES (ARTICLES 2, 3, 6, 17, 23, 24, 28, 29)

In Canada, more than 13% of youth (ages 15-24) identify as living with one or more disabilities.⁴ Children and youth with disabilities continue to encounter systemic and institutional barriers in a variety of spaces and circumstances, including while trying to access education, supports and services. The impacts of the pandemic, such as school closures, shifts to online learning and reductions in services, have both amplified these existing barriers, and in many cases, posed unique and compounded challenges and concerns for children and youth with disabilities and their families. For instance, during the pandemic, a greater proportion of parents of children with disabilities were reported to be very or extremely concerned for their children’s school year and academic success, as well as their children’s mental health, compared with parents of children without disabilities.⁵

3.1. Education

Children with disabilities continue to face systemic social and institutional barriers while trying to access education. These barriers have a negative impact on the educational attainment, training, employment, career path and overall well-being of children with disabilities in Canada. These issues are the reality for children with disabilities across Canada – whether they are living in remote areas of Canada, on First Nation reserves, in cities and urban centres across the country, or in the north.

According to a 2022 inquiry report on human rights issues affecting students with reading disabilities by the Ontario Human Rights Commission,⁶ students with reading

⁴ Canadian Survey on Disability, 2017, available at: <https://www150.statcan.gc.ca/n1/daily-quotidien/181128/dq181128a-eng.htm>.

⁵ Statistics Canada, The impact of the COVID-19 pandemic on Canadian families of children with disabilities, August 27, 2020, available at: <https://www150.statcan.gc.ca/n1/pub/45-28-0001/2020001/article/00066-eng.pdf>.

⁶ Available at: <https://www.ohrc.on.ca/en/right-to-read-inquiry-report>.

disabilities are more likely to drop out of school, less likely to go on to post-secondary education, and tend to take longer to finish programs they enroll in. The report found that these effects can continue past their schooling and can have a negative impact on employment, leading to lower incomes, poverty and homelessness and higher rates of involvement in crime and incarceration. Adults with dyslexia also told the inquiry about the long-term effects of not learning to read, including mental health and substance abuse issues and negative impacts on their employment.

Similarly, a 2018 study⁷ from the human rights commission of the province of Quebec found that, due to a lack of specialized personnel to support teachers and students with disabilities, nearly 40% of students with disabilities in Quebec drop out of secondary school without a diploma or any qualifications, compared to less than 10% of students without disabilities.

Based on previous consultations with provincial and territorial human rights commissions across Canada and with external stakeholders who work with people with disabilities, the CHRC wishes to highlight some of the ongoing barriers that people with disabilities face in education. Some of the barriers identified include:

- inadequate and insufficient accommodation arrangements in schools across Canada, which results in students being unable to attend the classes of their choice, write exams under necessary conditions, receive necessary transportation services, and bring service animals into classrooms and lecture halls;
- increased class sizes and decreased funding for specialized supports for students with disabilities, including a decrease in the number of educational assistants in classrooms; and
- closure of specialized education centres for people with disabilities, such as education in Sign language for students.

The CHRC remains concerned over the lack of disability accommodation and support in Canada's schools, the experiences of children with disabilities who are bullied and avoided or excluded at school due to their disability, and the lack of appropriate services and funding for children with disabilities in the education system.

Recommendation #2: That Canada address systemic social and institutional barriers to education for children and youth with disabilities. These efforts should include fostering inclusive, supportive and accessible learning environments. These efforts should also ensure coordination between the various jurisdictions in Canada in relation to these issues.

⁷ Commission des droits de la personne et des droits de la jeunesse, Le respect des droits des élèves HDAA et l'organisation des services éducatifs dans le réseau scolaire québécois : une étude systémique, Daniel Ducharme et Johanne Magloire, avec la collab. de Me Karina Montminy, (Cat. 2.120-12.61.1), 2018, p. 44, available at : https://cdpdj.qc.ca/storage/app/media/vos-droits/qu-est-ce-que/droits-des-eleves-HDAA/etude_inclusion_EHDAA.pdf.

3.2. Access to Supports and Services

Children with disabilities have unique needs and require targeted supports. This can include individual supports to participate in school, adapted equipment to play and engage in physical activities, and specialized health services to maintain good physical and mental health. The need for supports also extends to families of children with disabilities.

Access to support services for children and youth with disabilities in Canada was noted as an issue of concern by the former Special Rapporteur on the Rights of Persons with Disabilities in her report on her April 2019 visit to Canada. The Special Rapporteur noted the prevalence of families with at least one child with a disability not receiving the support they need, and the excessive wait list times to receive such supports in some regions.⁸

She further noted the stress that a lack of access to supports and services places on families: “[f]amily members have to take over the responsibility of providing support, give up their jobs to provide personal care, manage the delivery of multiple services and make themselves available at short notice when service provision is cancelled.”⁹

Finally, the Special Rapporteur noted that, in some cases, foster care placement is the only viable option for parents with children with disabilities, and that at the age of 18, young persons with disabilities who can no longer be supported by their families risk being placed in institutions such as nursing homes for older persons.

In addition to these concerns, the CHRC also wishes to highlight access to supports and services in relation to child and youth mental health in Canada, which remains a pressing concern. At a high-level, the picture is alarming: two-thirds (2/3) of children and youth in Canada feel like they don’t belong, which can harm their development, and contribute to poor performance in school, conflict with the law, homelessness, mental health issues and suicide.¹⁰ Canada’s youth suicide rate (ages 15-24) is the third highest in the industrialized world.¹¹ Further analysis shows that 34% of 11 to 15 year olds experience weekly symptoms of mental distress, including headaches, stomach aches and trouble sleeping, and 10.5% of 12 to 17 year olds report living with a mood and/or anxiety disorder.¹² According to the Mental Health Commission of Canada, up to 70% of mental health problems and illnesses begin in childhood or adolescence, and as many as three (3) in four (4) children and youth with mental health problems and

⁸ UNGA, Report of the Special Rapporteur on the Rights of Persons with Disabilities, 43rd Sess, Item 3, UN Doc A/HRC/43/41/Add.2, (19 December 2019), available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G19/346/54/PDF/G1934654.pdf?OpenElement>.

⁹ *ibid* at para. 66.

¹⁰ See: <https://www.unicef.ca/en/press-release/two-thirds-children-and-youth-canada-feel-they-dont-belong>.

¹¹ See: <https://cmha.ca/fast-facts-about-mental-illness#.VsOJPfkrKM8>.

¹² UNICEF, Where does Canada stand? The Canadian Index of Child and Youth Well-being: 2019 Baseline Report, available at: https://www.unicef.ca/sites/default/files/2022-07/2019_Baseline_Report_Canadian_Index_of_Child_and_Youth_Well-being%281%29.pdf.

illnesses do not access services and treatments.¹³ Some evidence also suggests that the pandemic has both increased the number of children and youth experiencing mental health challenges while also disrupting their access to the supportive people, places and routines they need to manage their mental health.¹⁴ This leaves children and youth at a much higher risk of continuing to experience these mental health issues as adults.

The CHRC acknowledges that while substantial efforts have been undertaken to raise awareness and make progress in relation to child and youth mental health in Canada, gaps remain with respect to supports and services in the mental health system. Some of the identified gaps include: preventive approaches that integrate mental health supports into school and community programs; coordination between jurisdictions, services and systems of care; the availability of services and timely access; and the transition from child/youth to adult services.¹⁵

Recommendation #3: That Canada address gaps in access to supports and services for children with disabilities and their families, including in relation to mental health supports and services. These efforts should ensure coordination between the various jurisdictions in Canada in relation to this issue.

4. INDIGENOUS CHILDREN (ARTICLES 2, 3, 5, 6-9, 19, 20, 24, 30, 34, 37, 39)

The CHRC views the situation of Indigenous peoples¹⁶ in Canada as one of the most pressing human rights issues facing Canada today. Indigenous peoples in Canada, including Indigenous children and youth, continue to be significantly disadvantaged in terms of education, employment and access to basic needs such as water, food security and housing. In addition, Indigenous women and girls experience systemic discrimination and bear a disproportionate burden of violence, and are murdered or go missing at a disproportionately high rate. The root causes of this discrimination and violence are varied, complex, and intersectional.

¹³ Mental Health Commission of Canada, *The Mental Health Strategy for Canada: A Youth Perspective*, 2016, available at: https://www.mentalhealthcommission.ca/sites/default/files/2016-07/Youth_Strategy_Eng_2016.pdf.

¹⁴ UNICEF, *Worlds Apart: Canadian Companion to UNICEF Report Card 16*, 2020, available at: https://www.unicef.ca/sites/default/files/2020-09/UNICEF%20RC16%20Canadian%20Companion%20EN_Web.pdf.

¹⁵ Canadian Institute for Health Information, *Care for Children and Youth with Mental Disorders*, 2015, available at: <https://www.cihi.ca/sites/default/files/document/care-children-youth-with-mental-disorders-en.pdf>.

¹⁶ The term “Indigenous” or “Indigenous peoples” is used throughout this submission to refer to First Nations, Inuit and Métis peoples in Canada. In specific areas of this submission, the terms Aboriginal or First Nations may be used, such as where this is the official terminology used in a referenced law, where the term provides greater specificity, or where a law or program is applicable only to a particular Indigenous population. However, the CHRC notes that the term “Aboriginal” is increasingly outdated, and as such, where other terms such as Indigenous can be used, the CHRC supports this.

Canada has a long and dark history of colonization, institutionalized child neglect, abuse and discrimination, including systematically separating Indigenous children from their families, culture and identity. The legacy of the residential school system looms large over many aspects of Indigenous lives, and continues to have a detrimental effect on the well-being of Indigenous communities in Canada. As such, Indigenous children face significant barriers in being able to fully enjoy their rights.

The CHRC wishes to highlight the 2021 Follow-up Report to the Canadian Human Rights Commission on the Human Rights of the Innu of Labrador¹⁷ (Follow-up Report), which builds on two previous reports on the rights of the Innu, issued in 1993 and 2002. The Innu have a rich history that has been marred by colonialism, paternalism, displacement and the intergenerational impacts of residential schools in the same way that other Indigenous histories have across Canada. The Follow-up Report clearly outlines that the Innu of Labrador – including children, youth and their families – continue to face systemic discrimination and significant obstacles to the full enjoyment of their rights, including in areas such as child and family services, protection from violence, healthcare, housing, education, policing and the justice system, language and culture, and economic well-being.

While the Follow-up Report acknowledges that progress has been made in some areas, it notes that many of the challenges and concerns of the Innu outlined in the current report remain similar to those outlined almost 30 years ago in the original 1993 report, illustrating “decades-long denial of their human rights.” The report provides a number of recommendations to federal and provincial governments toward substantive equality for the Innu, which the CHRC urges Canada to review and give full and serious consideration.

The CHRC has jurisdiction specifically to deal with complaints about services for Indigenous children on reserve. Because of this, several of the issues outlined below refer specifically to First Nation children on reserve. However, the CHRC recognizes that many of these realities are felt and experienced by First Nation children living both on and off reserve, and by Métis, Inuit and all Indigenous children in Canada.

4.1. Equitable and Adequate Services

Across the country, many First Nations children and their families continue to live without equitable and adequate housing, safe drinking water or access to quality education, child welfare, and other social services. First Nations often cite lack of funding as the main reason for inadequate programs and services on reserve, including education services, disability-related services, and social and health supports.

The CHRC has received a number of complaints filed by or on behalf of Indigenous children and families, relating to the availability of and funding for a broad range of public services delivered on reserve. For instance, complaints have been filed regarding

¹⁷ Available at: <https://www.chrc-ccdp.gc.ca/sites/default/files/2021-08/2766704-CHRC%20Innu%20Follow-up%20Report%202020-21.pdf>.

the adequacy of federal funding and supports for special education, health, and home and community care services. Examples include the following:

- an Ontario First Nation filed a human rights complaint alleging that the federal government discriminates by failing to provide sufficient funding and supports to enable the delivery of appropriate special education services to First Nations children with disability-related education needs who live on reserve in Ontario;¹⁸
- an Alberta First Nations woman living on reserve filed a human rights complaint alleging that the federal government discriminated by failing to take adequate steps to ensure that her son, who uses a wheelchair, received safe transportation to and from school; and
- a Manitoba First Nations woman living on reserve filed a complaint on behalf of her young son, alleging that the federal government discriminates by failing to provide sufficient funding and supports to enable the delivery of appropriate special education services, and various health, home and community care services, to First Nations children on reserve in Manitoba.

Further to these complaints, the former Special Rapporteur on the Rights of Persons with Disabilities reported that many Indigenous children with disabilities in Canada are often removed from their homes because of the lack of appropriate support services in Indigenous communities. The Special Rapporteur also found that some families are afraid of reporting the disability status of a relative due to the risk of separation.¹⁹

In a series of ground-breaking decisions from January 2016 to the present, the Canadian Human Rights Tribunal (the Tribunal) found the federal program and funding for child and family services on reserve and in the Yukon to be discriminatory. It also found the government liable for failing to properly implement Jordan's Principle – a child-first principle that promotes substantive equality by ensuring First Nations children get the services they need, taking into account their geographic, historical and cultural circumstances. These initial rulings then led to numerous implementation decisions, finding the government had not done enough to remedy the discrimination, and giving further and more detailed directions.²⁰

In addition, beginning in September 2019, the Tribunal ordered the federal government to pay financial compensation to individual victims of the government's discriminatory

¹⁸ The Canadian Human Rights Tribunal has recently issued preliminary rulings on a redefined complaint alleging that Canada is failing to meet the standard of substantive equality with respect to First Nations education in Ontario: *MCFN v. AGC*, [2021 CHRT 31](#); *Mississaugas of the Credit First Nation v. Attorney General of Canada*, [2021 CHRT 37](#).

¹⁹ *supra* note 8.

²⁰ *First Nations Child and Family Caring Society of Canada and Assembly of First Nations et al. v. Attorney General of Canada*: [2016 CHRT 2](#) (re liability); [2016 CHRT 10](#) (first ruling on remedy); [2016 CHRT 16](#) (second ruling on remedy); [2017 CHRT 7](#) (Choose Life); [2017 CHRT 14](#) (ruling on Jordan's Principle compliance); [2017 CHRT 35](#) (Jordan's Principle amendments); [2018 CHRT 4](#) (ruling on child and family services compliance); 2019 CHRT 1 (obstruction and costs); [2019 CHRT 7](#) (interim ruling on eligibility under Jordan's Principle); [2020 CHRT 20](#) (ruling on Jordan's Principle eligibility); [2020 CHRT 36](#) (proposed Jordan's Principle eligibility criteria); 2021 CHRT 12 (consent order regarding Jordan's Principle eligibility process); 2021 CHRT 41, as amended January 18, 2022 (ruling on major capital).

practices.²¹ The federal government challenged the Tribunal's decisions concerning financial compensation. It also challenged the Tribunal's finding that the government used unduly narrow criteria when deciding which First Nations children are eligible to receive services under Jordan's Principle. In September 2021, the Federal Court of Canada dismissed Canada's challenges to these rulings, upholding the Tribunal's decisions in their entirety.²²

Following the Federal Court's decision, Canada agreed to enter settlement discussions with the parties to attempt to resolve the litigation. However, Canada appealed the Court's compensation ruling pending a final settlement agreement. On December 31, 2021, the parties reached Agreements-in-Principle to redress the discrimination. These tentative agreements set aside \$40 billion to, among other things, i) pay financial compensation to eligible First Nations children and family members; ii) reform the federal child and family services program; and iii) fully implement Jordan's Principle.²³ The parties hope to reach final settlement agreements in 2022.

The CHRC recognizes that An Act respecting First Nations, Inuit and Métis children, youth and families (the Act), which entered into force in 2020, provides an opportunity to improve the child welfare system. Among other things, the Act establishes national standards for the provision of child and family services to Indigenous children, and affirms Indigenous jurisdiction over child and family services. Many features of this new legislation are encouraging, including its emphasis on substantive equality, preventive care and the need for continuity of culture and language. However, the CHRC also shares the concerns of stakeholders that this legislation does not adequately address the need for reliable funding, which is critical for implementation. The Tribunal, as well as other respected bodies such as the Truth and Reconciliation Commission of Canada (TRC) and this Committee, have all stressed the need for Canada to provide adequate resources for Indigenous child and family services.

According to the Final Report of the National Inquiry into Missing and Murdered Indigenous Women and Girls²⁴ (Report), the crisis of child welfare, the chronic underfunding of essential services, and the many health disparities currently facing Indigenous children and their families can all be attributed to the legacy of colonialism and the intergenerational effects of trauma and genocide.

²¹ [2019 CHRT 39](#) (ruling on compensation); [2020 CHRT 7](#) (eligibility for compensation); [2020 CHRT 15](#) (Jordan's Principle compensation definitions); [2021 CHRT 6](#) (trusts); and [2021 CHRT 7](#) (compensation framework approval).

²² [2021 FC 969](#); appeal maintained in abeyance until April 15, 2022 (Federal Court of Appeal file no. A-290-21).

²³ Government of Canada, Agreements-in-Principle reached on compensation and long-term reform of First Nations child and family services and Jordan's Principle, January 4, 2022, online: <https://www.canada.ca/en/indigenous-services-canada/news/2022/01/agreements-in-principle-reached-on-compensation-and-long-term-reform-of-first-nations-child-and-family-services-and-jordans-principle.html>.

²⁴ Available at: <https://www.mmiwg-ffada.ca/final-report/>.

For instance, researchers found that, compared with those who did not attend residential school, residential school survivors are more likely to suffer various physical and mental health problems, to report higher levels of psychological distress and poorer self-rated health, and to be diagnosed with various chronic health conditions. Although access to culturally appropriate and relevant services was identified as one of the most important factors for healing for residential school survivors, the Report found that 1) there are not enough culturally relevant treatment and healing centres for Indigenous people across Canada, and 2) stable, sufficient and reliable funding is a barrier for those that do exist.

The Report also found that Canada has failed to ensure that Indigenous women, girls, and 2SLGBTQQIA²⁵ people have access to services and resources that are equitable to those received by non-Indigenous people. It stated that “[c]urrent health and wellness services are grossly lacking and often inappropriate and inaccessible, which contributes directly to the decreased safety and security of, and the violence experienced by, Indigenous women, girls, and 2SLGBTQQIA people.”²⁶

Recommendation #4: That Canada ensure that services for Indigenous children and their families are equitable, adequate to meet their needs and culturally appropriate. These efforts must be grounded in Jordan’s Principle.

The CHRC notes that, on June 3, 2021, Canada launched a National Action Plan²⁷ to respond to the issues identified in the Report. The CHRC welcomes this critical step, and acknowledges the important work that has gone into the Plan’s preparation. The CHRC wishes to note, however, that the Plan does not include concrete steps for implementation of its priorities, nor is there information about how the implementation will be monitored or how those responsible for action will be held accountable. Although the Plan makes note of this gap, and indicates that the development of an implementation plan is the next step in this process, no timeline for this has been clearly articulated.

The CHRC is also aware that a number of organizations led by and advocating for the rights of Indigenous women, girls and 2SLGBTQQIA people have expressed concerns over the consultation and engagement process that took place during the Plan’s development. These organizations have expressed that the process of developing the Plan was not sufficiently inclusive of a diversity of grassroots voices, and that as a

²⁵ This refers to people who are Two-Spirit, lesbian, gay, bisexual, transgender, queer, questioning, intersex and asexual. This is used throughout the Report both to include non-binary people and people with diverse sexualities, and as an explicit reminder that gender-diverse people’s needs must equally be taken into account.

²⁶ supra note 24, at p. 498.

²⁷ Available at: <https://mmiwq2splus-nationalactionplan.ca/>.

result, the Plan is not fully reflective of the priorities and realities of Indigenous women, girls, and 2SLGBTQQIA people.²⁸

Recommendation #5: That Canada provide details on the development of its implementation plan, including measures for monitoring and accountability, to address the issues identified in the Final Report of the National Inquiry into Missing and Murdered Indigenous Women and Girls, as well as the highlighted priorities in the National Action Plan, while ensuring an inclusive engagement process.

Finally, the CHRC also wishes to acknowledge that, in March 2022, the UN Committee on the Elimination of Discrimination against Women (CEDAW) issued a decision²⁹ in favour of Mr. Jeremy Matson, who had filed a petition alleging that registration provisions of the Indian Act violated his rights and those of his children. The CHRC congratulates Mr. Matson on this important decision.³⁰ The CEDAW decision affirmed that Canada discriminated against him by preventing Mr. Matson from transmitting his status to his children. The decision noted that it is up to Indigenous peoples through their own customs and laws to decide how to identify themselves and that this right is enshrined in the UN Declaration on the Rights of Indigenous Peoples.

The CHRC welcomes the Government of Canada's recent commitment³¹ to introduce new legislation by summer 2022 to amend the registration provisions of the Indian Act, and encourages Canada to consider the CEDAW decision when making these legislative changes.

Recommendation #6: That Canada take the necessary steps to amend the registration provisions of the Indian Act, and consider the decision from the Committee on the Elimination of Discrimination against Women when making these legislative changes.

4.1. Residential Schools

In light of the ongoing discoveries of the remains of hundreds of unmarked graves on the grounds of former residential schools, the CHRC joins the call for a thorough investigation of all former residential school sites, and stands with residential school

²⁸ For instance, one of these organizations is the Native Women's Association of Canada (NWAC), which has released its own Action Plan, called "Our Calls, Our Actions", available at: <https://www.nwac.ca/wp-content/uploads/2021/06/NWAC-action-plan-FULL-ALL-EDITS.pdf>.

²⁹ Available at: https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CEDAW%2fC%2f81%2fD%2f68%2f2014&Lang=en.

³⁰ See: <https://www.chrc-ccdp.gc.ca/en/resources/more-must-be-done-dismantle-the-lasting-effects-colonialism>.

³¹ See: <https://www.canada.ca/en/indigenous-services-canada/news/2022/03/first-nations-families-and-canada-agree-to-put-litigation-on-hold-while-working-to-end-the-legacy-of-enfranchisement-under-the-indian-act.html>.

survivors and their families, Indigenous leaders and communities, the TRC and the Office of the United Nations High Commissioner for Human Rights who have called for prompt and meaningful action.³²

For decades, residential school survivors, their families, and communities have insisted that many children were buried in unmarked graves on school grounds, but had to fight to be believed or heard in the face of racist indifference and callous disregard. The TRC estimates that the real number of deaths in residential schools across Canada far exceeds the known total. The TRC's Calls to Action include six (6) calls related to missing children and burial information, which the CHRC maintains must be implemented without delay. Further, the CHRC wishes to emphasize that these efforts must be led by Indigenous peoples, informed by their wishes, and respectful of their rights.

In August 2021, Canada committed to appointing a Special Interlocutor on Indian Residential Schools unmarked burial sites, to work collaboratively with Indigenous peoples on the ongoing discoveries.³³ As of March 2022, this appointment has not yet been made.

Recommendation #7: That Canada provide details on its work to implement the Truth and Reconciliation Commission's Calls to Action related to missing children and burial information, and finalize the appointment of the Special Interlocutor.

4.2. Suicide Rates for Indigenous Youth

As previously highlighted, youth suicide rates in Canada are very high. Indigenous youth in Canada, in particular, experience disproportionately high rates of suicide and suicidal ideation in comparison to their non-Indigenous counterparts. In 1995, a special report published by the Royal Commission on Aboriginal Peoples estimated that the rate of suicide among Indigenous youth was five (5) to six (6) times higher than among non-Indigenous youth in Canada.³⁴ Unfortunately, over the past three decades, these figures have remained largely unchanged, with Indigenous youth continuing to be at high risk of suicide.³⁵ In addition, the most high risk group for suicide are Inuit males aged 15-29, with rates almost forty (40) times the national rate.³⁶

³² See: <https://www.chrc-ccdp.gc.ca/en/resources/investigate-the-grounds-every-residential-school-canada>.

³³ See: <https://www.canada.ca/en/department-justice/news/2021/08/backgrounder-special-interlocutor-on-indian-residential-schools-irs-unmarked-burial-sites.html>.

³⁴ Royal Commission on Aboriginal Peoples, Choosing Life: Special Report on Suicide Among Aboriginal People, 1995, available at: <http://data2.archives.ca/rcap/pdf/rcap-459.pdf>.

³⁵ Report of the Standing Committee on Indigenous and Northern Affairs, Breaking Point: The Suicide Crisis in Indigenous Communities, 2017, available at: <https://www.ourcommons.ca/Content/Committee/421/INAN/Reports/RP8977643/inanrp09/inanrp09-e.pdf>.

³⁶ Inuit Tapiriit Kanatami, National Inuit Suicide Prevention Strategy, 2016, available at: <https://www.itk.ca/wp-content/uploads/2016/07/ITK-National-Inuit-Suicide-Prevention-Strategy-2016.pdf>.

The reasons for these disproportionately high rates are many and multi-faceted. For example, the lingering effects of the residential school system, the manner in which child welfare and mental health services are delivered, the social and economic marginalization of Indigenous peoples more broadly, and a variety of structural issues all contribute to this situation.

Recommendation #8: That Canada address Indigenous youth suicide, including by ensuring that culturally-appropriate mental health services are available in Indigenous communities.

5. RACIALIZED CHILDREN (ARTICLES 2, 3, 6, 28-30, 37, 40)

The realities of systemic racism and discrimination in Canada have been repeatedly recognized by international and regional human rights mechanisms, by civil society and domestic human rights institutions, and – in many cases – by government. Nevertheless, substantive progress towards addressing these realities remains largely elusive.

The CHRC acknowledges that there are ongoing federal initiatives that contribute to addressing racism and discrimination in Canada. However, the CHRC maintains that, without a rigorous human rights lens, gaps in progress will remain, and may even exacerbate systemic inequities based on race. To prevent this, it is essential that both the development and evaluation of all laws, policies and programs fully integrate race-based considerations, to ensure substantive equality in Canada.

For instance, racialized children³⁷ and youth in Canada continue to experience a number of barriers to equality in a variety of contexts and settings, including historic and ongoing systemic racism and discrimination in education and child welfare. This results in negative and harmful impacts on their ability to thrive and their future well-being.

At the conclusion of its official visit to Canada in October 2016, the UN Working Group of Experts on People of African Descent expressed concern over anti-Black racism and the lack of social inclusion in the education system in Canada, and found that race-based stereotypes about African Canadian students' scholastic ability have had a devastating impact. According to the Working Group, African Canadian students have disproportionately low educational attainment, high rates of dropout, suspensions and expulsions, and are more likely than other children to be streamed into general and basic-level academic programs rather than advanced-level programs. The Working Group noted three primary concerns in the education system for African Canadian

³⁷ The term “racialized children” is used throughout this submission and refers to children who are not Indigenous or White. This term is widely preferred over descriptions such as “visible minority” or “person of colour” as it expresses race as a social construct rather than a description of people based on perceived characteristics (adapted from the Ontario Human Rights Commission).

students: 1) differential treatment, 2) lack of Black and African Canadian history and culture in the curriculum, and 3) the absence of Black teachers.³⁸

Concerns have also been raised over certain programs in schools that have a disproportionate effect on racialized children. According to a 2021 submission on policing reform from BC's Office of the Human Rights Commissioner,³⁹ significant concerns have been raised by Black, Indigenous and other marginalized students – as well as their parents and communities – about the harms of having police in schools. This police presence is a part of “school liaison officer programs”, which have broad mandates related to school safety. However, according to the voices of most Black, Indigenous and other marginalized students, these programs make them feel less safe at school. The submission states that these students face significant harmful impacts if these programs continue, including disproportionately high rates of suspensions and expulsions of Black students. The submission further states that “[t]hese effects can damage academic performance and future prospects, criminalize common student indiscretions, make students feel like they are under constant surveillance at school and signal to students whose personal and community histories involve oppressive police action that their school is not a welcoming space for them.”

There is also an overrepresentation of Black children in the child welfare system. The social and economic issues that contribute to the overrepresentation of Black children in child welfare include poverty, the lack of adequate and appropriate services and supports, and the intergenerational effects of systemic racism. Further, negative assumptions about poverty and race, policies and system-level practices, and an individual's conscious or unconscious racial bias, are all factors that may lead to incorrect assumptions about the level of risk racialized children are exposed to, which could result in decisions that adversely affect Black children and their families.⁴⁰

The trauma of being removed from one's family can be made worse for Black children and youth when, for example, they are placed with non-Black foster families and are away from their communities for long periods of time. This may lead to feelings of alienation from their family and community and result in a loss of connection to both culture and identity.⁴¹ For instance, the UN Working Group of Experts on People of

³⁸ UNGA, Report of the Working Group of Experts on People of African Descent on its mission to Canada, 36th Sess, Item 9, UN Doc A/HRC/36/60/Add.1, (16 August 2017), available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G17/239/60/PDF/G1723960.pdf?OpenElement>.

³⁹ BC's Office of the Human Rights Commissioner, Equity is safer: Human rights considerations for policing reform in British Columbia, 2021, available at: <https://bchumanrights.ca/wp-content/uploads/BCOHR Nov2021 SCORPA Equity-is-safer.pdf>.

⁴⁰ Ontario Human Rights Commission, Interrupted childhoods: Over-representation of Indigenous and Black children in Ontario child welfare, 2018, available at: http://www.ohrc.on.ca/sites/default/files/Interrupted%20childhoods_Over-representation%20of%20Indigenous%20and%20Black%20children%20in%20Ontario%20child%20welfare_accessible.pdf.

⁴¹ Ontario Association of Children's Aid Societies (OACAS), One Vision One Voice: Changing the Ontario Child Welfare System to Better Serve African Canadians, Practice Framework Part 1: Research Report, 2016, available at: https://www.oacas.org/wp-content/uploads/2016/09/One-Vision-One-Voice-Part-1_digital_english-May-2019.pdf.

African Descent expressed concern over reports that, "...across Canada, African Canadian children are taken from their parents by child welfare agencies on dubious grounds without respect for the extended care opportunities that exist in African Canadian families and communities."⁴²

There are also many negative and long-term effects associated with being placed in care. According to a 2018 report on child welfare by the Ontario Human Rights Commission,⁴³ these effects can include higher rates of youth homelessness, lower levels of post-secondary education, low income, high unemployment and increased prevalence of chronic health problems for children. The report also found that compared to youth from the general population, youth from the child welfare system are at much greater risk for becoming involved with the juvenile criminal justice system – a process sometimes referred to as the “child-welfare-to-prison pipeline”. As a result of racial disparities in the child welfare system, Black children may be disproportionately likely to experience these negative effects.

Recommendation #9: That Canada address systemic racism and discrimination against racialized children in Canada, including in relation to education and child welfare. These efforts should ensure coordination between the various jurisdictions in Canada in relation to these issues.

6. ADEQUATE STANDARD OF LIVING (ARTICLES 4, 24, 27)

Despite being one of the wealthiest nations, Canada has a significant child population that does not enjoy an adequate standard of living. It is the poorest children who have been, and are most affected by, widening income inequality and the resulting stress experienced by families.⁴⁴ This situation, which has been exacerbated by the pandemic, is of great concern to the CHRC, and greater support is required to lift children and families out of poverty.

6.1. Poverty, Food Insecurity and the Right to Adequate Housing

The rate of child and family poverty continues to be unacceptably high in Canada. There are 1.3 million children living in poverty with their families, which represents 17.7% of children under 18.⁴⁵ Among those with the highest prevalence of child poverty rates are racialized groups (22%), recent immigrants (35%) and, most significantly, Indigenous children (53% for First Nations children living on reserve). This is in stark contrast to

⁴² supra note 38 at para. 68.

⁴³ Available at: http://www.ohrc.on.ca/sites/default/files/Interrupted%20childhoods%20Over-representation%20of%20Indigenous%20and%20Black%20children%20in%20Ontario%20child%20welfare_accessible.pdf.

⁴⁴ See: <https://www.unicef.ca/en/unicef-report-card-14-child-well-being-sustainable-world>.

⁴⁵ Campaign 2000, Report Card on Child and Family Poverty in Canada – 2021: No one left behind: Strategies for an inclusive recovery, available at: <https://campaign2000.ca/wp-content/uploads/2021/11/C2000-2021-National-Report-Card-No-One-Left-Behind-Strategies-for-an-Inclusive-Recovery-AMENDED.pdf>.

non-racialized, non-immigrant and non-Indigenous children, where only 12% report to live in poverty.⁴⁶

The harmful impacts of child poverty can affect many aspects of a child's life. Many studies provide strong evidence that children living in poverty tend to have worse cognitive, social-behavioural and health outcomes, with the strongest negative effects evident in preschool years.⁴⁷

Poverty and household food insecurity are strongly interrelated in Canada. For instance, 70% of households who rely on social assistance in Canada are food insecure.⁴⁸ Food insecurity continues to affect many people across Canada, including 1.15 million – or one (1) in six (6) – children in Canada, and is more prevalent among households with children under the age of 18.⁴⁹ In 2018, one (1) in four (4) children and youth in Canada reported that they go to bed or school hungry at least sometimes because there is not enough food at home.⁵⁰ In addition, data has showed that during the pandemic households with children were more likely to be food insecure than households without children.⁵¹ Food insecurity can have harmful effects on a child's growth, development and well-being, and can pose numerous health risks, such as obesity, diabetes, malnutrition and chronic illness.⁵² Northern populations and marginalized groups, in particular, experience disproportionately high rates of food insecurity.

There are also strong interconnections between poverty and inadequate housing for children. In Canada, the rate of core housing need is higher for children than the in the general population. The 2016 Census identified 879,865 children in core housing need in Canada, or 13.3% of all children living in private dwellings, compared to 10.6% of the total population who are in core housing need.⁵³ Children "aging out" of care – which refers to the process that occurs when youth must leave a formal system of care designed to provide services below a certain age level – are another group facing significant housing need, but a lack of data precludes a full evaluation of this need.⁵⁴

⁴⁶ *ibid.*

⁴⁷ *supra* note 12.

⁴⁸ See: <https://proof.utoronto.ca/food-insecurity/>.

⁴⁹ See: http://rightsofchildren.ca/wp-content/uploads/2019/10/Fact-Sheet-Right-to-food_docx.pdf.

⁵⁰ See: <https://vanierinstitute.ca/in-focus-2019-food-insecurity-in-canada/>.

⁵¹ Children First Canada, Raising Canada 2021 – Top 10 threats to childhood in Canada: Recovering from the impacts of COVID-19, available at: https://childrenfirstcanada.org/wp-content/uploads/2021/08/CFC-RC-Report-2021_Final.pdf.

⁵² See: https://canadianfeedthechildren.ca/the-feed/the-ultimate-guide-to-food-security-2019/?category=advertising&qclid=CjwKCAiAj-xBRBjEiwAmRbqYiHZnoOsSKC_S4Zdeuilc_KBaFII0j3HXAN1ICVqW0LY9Kd48_nTUBoCHT4QAvD_BwE.

⁵³ According to the Canada Mortgage and Housing Corporation, a household is in core housing need if its housing is below one or more of the following standards: adequacy (housing does not require any major repairs, according to residents), suitability (housing has enough bedrooms for the size and makeup of resident households, according to National Occupancy Standard requirements) and affordability (housing costs less than 30% of before-tax household income), and it would have to spend 30% or more of its before-tax household income to access local housing that meets all three standards.

⁵⁴ The Office of the Federal Housing Advocate has commissioned a Fact Sheet from Statistics Canada that will compile existing data on the housing experiences of children in Canada. This is expected to be

The CHRC is also aware that, in some jurisdictions, family status remains one of the most commonly cited grounds of discrimination in complaints regarding housing, with widespread allegations of landlords not renting to families with children.⁵⁵ Furthermore, 235,000 Canadians experience homelessness each year – 35,000 on any given night – with young people (ages 13-24) making up approximately 20% of the homeless population in Canada.⁵⁶

For many youth, their first experience of homelessness occurs well before they are entitled to access interventions and supports, and youth who leave home at a younger age experience both increased hardship before they become homeless and greater adversity once on the streets. Additionally, those who leave home at an early age are more likely to: experience multiple episodes of homelessness; have greater involvement with child protection services; experience bullying; become victims of crime once homeless, including sexual assault; have greater mental health and addictions symptoms; experience poorer quality of life; attempt suicide; and become chronically homeless.⁵⁷ Those in vulnerable circumstances and who face discrimination on the basis of multiple and intersecting identities are often even more profoundly impacted. For example, 2SLGBTQQIA youth with disabilities are generally overrepresented in homeless populations. These outcomes make eviction prevention a particular imperative when children are involved.

The CHRC is encouraged by the passage of federal housing and anti-poverty legislation, and the earlier release of national housing and poverty reduction strategies, which demonstrate a commitment to recognizing and addressing the social and economic disadvantage that certain groups – including children and their families – continue to experience. Given the prevalence of children in food insecure households, as well as the harmful impacts that food insecurity can have on a child, the CHRC is encouraged by the inclusion of food insecurity as an indicator in the Poverty Reduction Strategy. The CHRC also welcomes the recent appointment of the Federal Housing Advocate, who is mandated to examine and report on systemic housing issues.

However, given that the problems of child poverty and inadequate housing are interrelated, interdependent and often indivisible, it is imperative that these new initiatives work together. The CHRC is concerned that a lack of coordination reduces the likelihood of success of each separate initiative, and may hinder overall progress towards equality. Meaningful progress also demands broader coordination within and beyond the federal government, with provinces and territories, Indigenous governments,

released before June 30, 2022. More information can be found on the Housing Experiences in Canada landing page, available at: <https://www150.statcan.gc.ca/n1/pub/46-28-0001/462800012021001-eng.htm>.

⁵⁵ See: <https://www.ohrc.on.ca/en/human-rights-and-family-ontario/housing>; <https://www.cbc.ca/news/canada/new-brunswick/international-student-moncton-apartment-children-1.6030755>; <https://www.cbc.ca/news/canada/montreal/housing-discrimination-extra-hurdle-families-quebec-1.6072599>; <https://www.cbc.ca/news/canada/british-columbia/way-too-big-of-a-family-for-the-house-renters-denied-b-c-home-take-their-case-to-human-rights-tribunal-1.4396326>.

⁵⁶ Gaetz, S., O'Grady, B., Kidd, S. & Schwan, K., Without a Home: The National Youth Homelessness Survey, 2016, available at: <http://rightsofchildren.ca/wp-content/uploads/2019/07/WithoutAHome-final.pdf>.

⁵⁷ *ibid.*

municipalities, private and community organizations, and civil society. The causes and conditions of child poverty and youth homelessness touch on many key sectors of society, including healthcare, education, child protection, justice, employment supports, and housing. Thus, while federal housing and anti-poverty legislation are encouraging, in order for solutions to be effective in addressing inequality, they must be planned, resourced and coordinated across different initiatives and sectors of society.

Recommendation #10: That Canada provide details, including human rights-based targets and indicators, on the anticipated impact that the housing and anti-poverty legislation and strategies will have on children and their families. These efforts should ensure coordination between the various jurisdictions in Canada in relation to this issue.

7. INTERSEX, TRANS AND GENDER DIVERSE YOUTH (ARTICLES 2, 19, 24)

Intersex, trans and gender diverse youth in Canada continue to experience multiple and intersecting forms of discrimination. Recent studies indicate that many trans and gender diverse youth report discrimination, bullying and violence aimed at their gender identity. Individuals facing this are more likely to report homelessness⁵⁸ and mental health difficulties, including depression, anxiety, self-harm and suicide.⁵⁹ This abuse and discrimination occurs in a variety of spaces, including classrooms, playgrounds and social areas, health care settings, washrooms and changing rooms, on the way to and from school, and online.

According to Trans PULSE Canada's 2021 report on the health and well-being among trans and non-binary youth (ages 14-24),⁶⁰ one (1) in five (5) had avoided schools in the past 5 years for fear of harassment or outing. In addition, two (2) in five (5) had considered suicide in the past year, and one (1) in ten (10) had attempted suicide.

Further, the 2019 Canadian Trans and Non-binary Youth Health Survey identified the following results for trans and/or non-binary youth (ages 14-25):⁶¹

⁵⁸ See: https://egale.ca/wp-content/uploads/2020/01/Egale-Canada-National-LGBTQI2S-Action-Plan-Full_Web_Final.pdf. (Original reference unavailable as of January 22, 2024).

⁵⁹ See: Taylor, A.B., Chan, A., Hall, S.L., Saewyc, E. M., & the Canadian Trans & Non-binary Youth Health Survey Research Group (2020). *Being Safe, Being Me 2019: Results of the Canadian Trans and Non-binary Youth Health Survey*. Vancouver, Canada: Stigma and Resilience Among Vulnerable Youth Centre, University of British Columbia. Available at: https://apsc-saravyc.sites.olt.ubc.ca/files/2020/12/Being-Safe-Being-Me-2019_SARAVYC_ENG_1.2.pdf; and <https://www.suicideinfo.ca/resource/transgender-people-suicide/>.

⁶⁰ J. Navarro, F. Johnstone, J. Temple Newhook, M. Smith, j Wallace Skelton, K. Prempeh, L. S., C. Lopez, A. Scheim, G. Bauer, on behalf of the Trans PULSE Canada Team. *Health and well-being among trans and non-binary youth: Health disparities and the importance of social support*. 2021-06-25. Available from: <https://transpulsecanada.ca/research-type/reports>.

⁶¹ supra note 59.

- 43% reported not receiving physical health care when needed, and even more (71%) reported not receiving mental health services when needed;
- 45% reported their mental health as poor, and 88% indicated having a chronic mental health condition, such as depression or anxiety;
- 63% reported experiencing severe emotional distress, however, those with supportive families, safe schools, and/or a legal name change were less likely to report severe emotional distress;
- 70% reported experiencing some form of discrimination in their lifetime;
- 74% reported that they avoided public washrooms for fear of being harassed, being seen as trans, or being outed;
- 35% reported being physically threatened or injured in their community, and 66% reported being bullied, taunted, or ridiculed; and
- 39% reported feeling unsafe online, and 31% reported being cyberbullied.

The Survey also provided a number of key recommendations to address the health and well-being of trans and/or non-binary youth in Canada, including: safer public spaces; inclusive education; adequate and timely access to gender-affirming healthcare; and elimination of cross-provincial disparities in access to care.

In addition, the CHRC is concerned about the current backlash, worldwide and in Canada, against the rights of intersex, trans and gender diverse individuals and communities, including children and youth.⁶² Support for the rights of trans, intersex and gender diverse youth requires Canada to continue to make changes to better protect, respect, and fulfill these rights. This requires taking proactive measures to ensure inclusive health, and inclusive educational, social and public spaces.⁶³

Recommendation #11: That Canada protect, respect and fulfill the rights of intersex, trans and gender diverse youth. These efforts should include fostering inclusive and safe learning environments and public spaces, and ensuring adequate and timely access to gender-affirming healthcare and social supports. These efforts should also ensure coordination between the various jurisdictions in Canada in relation to this issue.

Non-consensual medical treatments and interventions, such as so-called conversion therapies, are cruel and harmful to intersex, trans and gender diverse infants, children, and young adults.⁶⁴ A recent study in Canada found that 5-10% of lesbian, gay,

⁶² United Nations Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity, Report on Gender Theory, 2021, available at: <https://www.ohchr.org/en/calls-for-input/reports/2021/report-gender-theory>; <https://williamsinstitute.law.ucla.edu/publications/bans-trans-youth-health-care/>; and <https://assembly.coe.int/LifeRay/EGA/Pdf/TextesProvisoires/2021/20210921-RisingHateLGBTI-EN.pdf>.

⁶³ Samuel Singer, Trans Rights Are Not Just Human Rights: Legal Strategies for Trans Justice (2020) 35:2 Special issue: On the Margins of Trans Legal Change, Canadian Journal of Law and Society, 293-315.

⁶⁴ See: <https://yogyakartaprinciples.org/relating-to-the-right-to-freedom-from-torture-and-cruel-inhuman-or-degrading-treatment-or-punishment-principle-10/>; and <https://egale.ca/egale-canada-urges-the-federal->

bisexual, transgender, queer, and Two-Spirit people have experienced conversion therapy, with prevalence notably highest in the youngest groups, suggesting that conversion therapy has not disappeared and may have even increased over time.⁶⁵ The CHRC commends Canada on the unanimous passage of legislation (Bill C-4) in 2021⁶⁶ to criminally prohibit so-called conversion therapy practices, as well as multiple municipal bans in cities across the country.⁶⁷

However, the CHRC wishes to highlight that more focus is required to specifically support the recognition,⁶⁸ rights, and inclusion of intersex children and youth. Research has shown that “despite the advances being made in trans consciousness-raising...the lived-realities (and, indeed, the very existence) of those who experience intersex variance remains underexplored, both within legal academia and wider social discourse,” and that “general public awareness of intersex, and intersex visibility, is significantly lower than compared to knowledge of the trans community.”⁶⁹

The CHRC notes that unnecessary intersex surgeries on children have been rightly characterized as a form of cruel, inhuman or degrading treatment or punishment by Canadian and international rights advocates, as well as by UN experts.⁷⁰ Further, in Canada, a legal Charter Challenge has been filed to remove an exemption in the Criminal Code of Canada that currently allows unnecessary and non-consensual cosmetic surgeries on intersex children.⁷¹

Recommendation #12: That Canada protect intersex children and youth from unnecessary cosmetic surgeries, and better research, understand, and respond to the needs of those with intersex variations to respect their human rights.

[government-to-meet-domestic-and-international-human-rights-requirements-of-intersex-people-on-international-intersex-awareness-day/](#).

⁶⁵ Travis Salway, Canadian research concerning the prevalence, nature, and scope of so-called “conversion therapy”: A brief submitted to the Canadian House of Commons Standing Committee on Justice and Human Rights concerning Bill C-6, An Act to amend the Criminal Code (conversion therapy), (December 9, 2020), available at:

<https://www.ourcommons.ca/Content/Committee/432/JUST/Brief/BR11023479/br-external/Jointly8-e.pdf>.

⁶⁶ See: www.parl.ca/LegisInfo/en/bill/44-1/c-4.

⁶⁷ See: www.noconversioncanada.com/.

⁶⁸ See: <https://www.opensocietyfoundations.org/briefing-papers/trans-children-and-youth>.

⁶⁹ Dunne, P. (2018). Towards Trans and Intersex Equality: Conflict or Complementarity? In J. Scherpe, A. Dutta, & T. Helms (Eds.), *The Legal Status of Intersex Persons* (pp. 217-240). Intersentia. doi:10.1017/9781780687704.014.

⁷⁰ See: <https://egale.ca/egale-submission-to-the-un-committee-against-torture/>; <https://www.wlu.ca/news/spotlights/2019/june/professor-morgan-holmes-is-pushing-for-change-for-intersex-people,-through-research-and-activism.html>; <https://www.hrw.org/report/2017/07/25/i-want-be-nature-made-me/medically-unnecessary-surgeries-intersex-children-us>; and <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=20739&LangID=E>.

⁷¹ See: <https://egale.ca/egale-in-action/ontario-superior-court-intersex-human-rights/>.

8. OTHER ISSUES REQUIRING ATTENTION

8.1. Children, Technology and Human Rights (Article 16)

Today's children and youth are the first generation to be born into a digital age and to live their lives through technology. Children and youth have the right to the benefits of technology and the digital environment, and to protection from human rights violations related to these. The CHRC wishes to highlight that it is crucial for children's online rights and protections to be consistent with their offline rights.

The pandemic has resulted in increased use of technology to provide critical services to children, such as health care and education, which has amplified economic and social disparities and deepened the digital divide. It has also resulted in increased surveillance of their homes and lives.

The CHRC notes that in March 2021, this Committee recommended that "States parties should ensure that digital technologies, surveillance mechanisms, such as facial recognition software...are not used to unfairly target children suspected of or charged with criminal offences and are not used in a manner that violates their rights, in particular their rights to privacy, dignity and freedom of association."⁷² However, as a result of the accelerated normalization of online activities due to the impacts of the pandemic, children and youth are now subject to an alarming amount of technological surveillance of their activities by both governments and the private sector. This leaves children and youth increasingly at risk and vulnerable to violations of their right to equality and to live free from discrimination. This surveillance is often done without children's awareness or informed consent, and presents new and profound risks to privacy and, consequently, to other rights. Further, this increasing surveillance, combined with other technologies such as big data, facial recognition, and AI can put children and youth at risk of having significant parts of their lives and decisions predicted, influenced, monetized and exploited in ways that are inconsistent with the best interests of the child.⁷³

Children are also victims of online exploitation, hate, harassment, and abuse, often related to their sex, race, gender identity or expression, or other characteristics. Cyberbullying and the sharing of child abuse images online are examples of serious violations of children's privacy rights that can have long-term ramifications due to the far reach and permanency of information online.⁷⁴

⁷² UN Committee on the Rights of the Child, General comment No.25 (2021) on children's rights in relation to the digital environment, para. 119, March 2021, available at: https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRC/C/GC/25&Lang=en.

⁷³ See <https://www.ohchr.org/EN/Issues/DigitalAge/Pages/DigitalAgeIndex.aspx>.

⁷⁴ See: https://www.unicef.ca/sites/default/files/imce_uploads/TAKE%20ACTION/ADVOCATE/DOCS/cyberbullying_submission_to_senate_committee.pdf; and <http://rightsofchildren.ca/wp-content/uploads/2016/01/CCRC-report-on-rights-of-children-in-Canada.pdf>.

There have been a growing number of international frameworks and guidance on whether and how children’s rights – including the right to privacy – can be both realized and protected in digital environments.⁷⁵ For example, in 2021: the UN Special Rapporteur on the Right to Privacy issued a report that made recommendations for children’s privacy in the digital age;⁷⁶ UNESCO issued their recommendation on ethical AI, referencing unique vulnerabilities affecting children and youth;⁷⁷ and UNICEF issued three important documents, including an updated policy guidance on AI for children,⁷⁸ concrete policy tools to operationalize the initial policy guidance,⁷⁹ and a Manifesto which includes a set of ten (10) demands to ensure children’s rights are protected and to protect children and data.⁸⁰ Additionally, in 2016, the UN Human Rights Council passed a resolution on the right to privacy in the digital age that makes explicit reference to the CRC.⁸¹ Further, section 38 of the European Union’s General Data Protection Regulation recognises that “[c]hildren merit specific protection with regard to their personal data, as they may be less aware of the risks, consequences and safeguards concerned and their rights in relation to the processing of personal data”.⁸²

In Canada, there is ongoing work by civil society, governments and the private sector in this area, but there is little legislation or regulation currently in place to identify, prevent, prohibit or remedy individual or systemic human rights violations against children that are linked to technology, human rights, and the digital environment.

Recommendation #13: That Canada address the prevention and protection against, and access to remedies for, violations of the rights of children in the digital environment. These efforts should acknowledge and include the roles and responsibilities of both governments and other actors, including those in the private sector.

8.2. Environmental Concerns (Article 24)

Children are increasingly vulnerable to the health, economic and social effects of climate change. According to a report from UNICEF, “climate change undermines [a child’s] most basic rights, putting their survival and well-being in danger and threatening

⁷⁵ See: <https://rm.coe.int/guidelines-to-respect-protect-and-fulfil-the-rights-of-the-child-in-th/16808d881a>; <https://rm.coe.int/it-guidelines-background-document-policy-guidance-on-empowering-protect/168093b644>; and <https://rm.coe.int/publication-it-handbook-for-policy-makers-final-eng/1680a069f8>.

⁷⁶ See: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G21/015/65/PDF/G2101565.pdf?OpenElement>.

⁷⁷ See: <https://www.unesco.org/en/articles/recommendation-ethics-artificial-intelligence>; and <https://unesdoc.unesco.org/ark:/48223/pf0000380455>, at para. 2(c), 103, 122, 125, 128.

⁷⁸ See: www.unicef.org/globalinsight/media/2356/file/UNICEF-Global-Insight-policy-guidance-AI-children-2.0-2021.pdf.pdf.

⁷⁹ See: www.unicef.org/globalinsight/media/1166/file/UNICEF-Global-Insight-tools-to-operationalize-AI-policy-guidance-2020.pdf.

⁸⁰ See: www.unicef.org/globalinsight/stories/we-need-ensure-childrens-rights-are-protected.

⁸¹ See: <https://www.un.org/unispal/wp-content/uploads/2018/03/A.72.53.pdf>.

⁸² See: <https://ejlt.org/index.php/ejlt/article/view/674/912>.

their access to food, water and education. By placing severe pressures on communities' coping mechanisms and exacerbating drivers of insecurity, the impacts of climate change also increase children's exposure to violence, exploitation and abuse."⁸³

Many young people cite climate change as the defining issue of their generation. They view it as a threat not only to their current well-being but also to their right to a sustainable future.⁸⁴ A large majority of children and youth in Canada are environmentally aware and concerned. For instance, 75% of children and youth in Canada reported that they notice the impacts of climate change weekly or daily, and only 6% are not taking any sort of action to combat it.⁸⁵

The Organisation for Economic Cooperation and Development's (OECD) international benchmark of environmental literacy is used to assess the ability of young people to explain five (5) of seven (7) environmental issues: 1) greenhouse gases in the atmosphere; 2) genetically modified organisms; 3) nuclear waste; 4) implications of clearing the forest for other land use; 5) air pollution; 6) extinction of plants and animals; and 7) global water shortage. In Canada, 71% of 15 year-olds are familiar with, or know something about, five (5) or more of these environmental issues, which is well above the OECD country average of 62%.⁸⁶

Children are also more sensitive than adults to deprivations, toxins and air pollution, and can be particularly vulnerable to environment-related disasters, which can displace them from their homes and communities, and disrupt their education, health and future.⁸⁷ As noted by the Special Rapporteur on Human Rights and Hazardous Substances and Wastes in his end-of-visit statement to Canada in June 2019, "[t]he impacts of [toxic] exposure by children during sensitive periods of development are unique and multifaceted. The silent pandemic of diseases and disabilities linked to childhood exposure is adversely affecting the full realization of human rights at various stages of life, with profound economic costs on individuals regarding health care, lost productivity and more."⁸⁸

The CHRC notes that, in October 2021, the United Nations Human Rights Council passed a resolution⁸⁹ formally recognizing – for the first time – the right to a safe, clean, healthy and sustainable environment as a human right. The resolution also recognized that the human rights implications of environmental damage are felt most acutely by

⁸³ See: https://downloads.unicef.org.uk/wp-content/uploads/2015/11/Unicef_2015childrenandclimatechange.pdf?_ga=2.133915342.1969223209.1581436171-1675860908.1581436171.

⁸⁴ supra note 45.

⁸⁵ supra note 12.

⁸⁶ UNICEF Office of Research. (2017). Building the Future: Children and the Sustainable Development Goals in Rich Countries. Innocenti Report Card 14, UNICEF Office of Research, Innocenti Florence.

⁸⁷ See: <https://www.unicef.org/environment-and-climate-change>; and <https://www.unicef.org/media/105376/file/UNICEF-climate-crisis-child-rights-crisis.pdf>.

⁸⁸ See: https://caid.ca/UN_OHCHR_State_SpRap_Canada2019.pdf.

⁸⁹ Available at: <https://documents-dds-ny.un.org/doc/UNDOC/LTD/G21/270/15/PDF/G2127015.pdf?OpenElement>.

those that are already in vulnerable situations, including Indigenous peoples, older persons, people with disabilities, and women and girls. The CHRC further notes that environmental concerns can have additional and compounding negative effects on children from marginalized communities due to socioeconomic disadvantage and environmental racism. For instance, African Canadian and Indigenous communities often experience environmental racism whereby landfills, waste dumps and other environmentally hazardous activities are disproportionately situated near their neighbourhoods, creating serious health risks. The chemicals and toxins from these activities contaminate the air, water and land surrounding these communities, and as a result, the constant exposure can lead to negative health impacts and, in some instances, potential life-threatening illnesses.⁹⁰ The CHRC welcomes recent legislative efforts to direct attention to this issue, and which propose national strategies to address the harm caused by environmental racism.⁹¹

Recommendation #14: That Canada protect the rights of children and youth to a safe, clean, healthy and sustainable environment. These efforts should include addressing the concerns and environmental well-being of children and youth in Canada, particularly in relation to the environmental racism experienced by those in marginalized communities.

9. CANADA'S IMPLEMENTATION OF INTERNATIONAL HUMAN RIGHTS OBLIGATIONS (ARTICLE 4)

The CHRC continues to be of the view that the current system for implementation of Canada's international human rights obligations, including those under the CRC, is both structurally inadequate and practically ineffective.

This system continues to contribute in a substantial way to a demonstrable lack of progress in implementing the recommendations that have emanated from the international human rights system, including those made by this Committee. To close the gap between aspiration and reality, Canada must find a new way of working by both enhancing existing systems and creating new ones.

The CHRC appreciates the voluntary commitments made by Canada during its 3rd Universal Periodic Review to strengthen intergovernmental cooperation and public dialogue on human rights. The CHRC notes the recent progress made, including the development of a protocol for following up on the recommendations Canada has

⁹⁰ National Collaborating Centre for Determinants of Health. (2017). Learning from Practice: Advocacy for health equity - Environmental racism. Antigonish, NS: National Collaborating Centre for Determinants of Health, St. Francis Xavier University.

⁹¹ See for example the current Bill C-226, An Act respecting the development of a national strategy to assess, prevent and address environmental racism and to advance environmental justice, available at: www.parl.ca/LegisInfo/en/bill/44-1/c-226, or the previous Bill C-230, An Act respecting the development of a national strategy to redress environmental racism, available at: <https://www.parl.ca/legisinfo/en/bill/43-2/c-230>.

received from international human rights bodies, the creation of a senior-level intergovernmental mechanism, and the hosting of more regular federal, provincial and territorial human rights ministerial meetings. While it is too early to see what the impact of these new and renewed mechanisms will be, the CHRC recognizes that they must be consistent, ongoing, transparent and inclusive to lead to meaningful implementation and reporting, and to facilitate more effective monitoring.

While the CHRC welcomes its designation as the body responsible for monitoring the Government of Canada's implementation of the United Nations Convention on the Rights of Persons with Disabilities and the developments listed above, the CHRC remains concerned that the current system continues to perpetuate a patchwork approach to progress without a foundational structure of monitoring and implementation of interdependent, interrelated, and indivisible human rights. Therefore, the CHRC believes strongly that, in order to effectively implement the recommendations made to Canada during this and other reviews, and so that all children in Canada are able to enjoy their rights fully and equally, it is imperative that substantial, meaningful and coordinated progress be made in ensuring a robust implementation and monitoring framework.

Recommendation #15: That Canada ensure that the enhanced systems being created towards a robust implementation and monitoring framework of its international human rights obligations, including those under the CRC, are inclusive and transparent.

The CHRC also wishes to acknowledge that there is a need for better data collection on the situation of children and youth in Canada. For instance, better information on the nature and needs of children and youth through access to meaningful, reliable, transparent and inclusive disaggregated data is necessary to provide greater insights on diverse sub-populations, and to more accurately capture the realities of children's intersectional identities and lived experiences.

Better data collection can help to improve decision and policy-making by identifying systemic inequities and its impacts, and help to predict, plan and evaluate equitable and inclusive supports and services. A particular focus should also be made on areas in which significant disparities have already been found to exist, including in relation to child welfare, education and mental health. Without such data, very little is known about how existing policies, supports and services are meeting, or failing to meet, the diverse needs of children and youth and their families.

While the CHRC acknowledges that Canada is taking steps to fill these data and knowledge gaps, the CHRC also wishes to acknowledge that where appropriate, and to identify and prevent possible risks or harm, the needs and voices of children and youth and their families should also be meaningfully included in data collection, use and disclosure processes.

Recommendation #16: That Canada improve disaggregated data collection on the diverse needs of children and youth to ensure meaningful progress on the realization of children's rights across Canada.