



CANADIAN
HUMAN RIGHTS
COMMISSION

COMMISSION
CANADIENNE DES
DROITS DE LA PERSONNE



***Submission to the
Committee on the Rights
of the Child***

By

The Canadian Human
Rights Commission

November 2011

Aussi offert en français sous le titre
**Mémoire présenté au Comité des droits de l'enfant
par la Commission canadienne des droits de la personne**

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1 INTRODUCTION

The Canadian Human Rights Commission (hereinafter referred to as “the Commission”) is Canada’s national human rights institution. It has been accredited “A-status” by the International Coordinating Committee of National Human Rights Institutions (ICC), first in 1999 and again in 2006 and 2011.

The Commission was established by Parliament through the *Canadian Human Rights Act* (CHRA) in 1977. It has a broad mandate to promote and protect human rights. The purpose of the CHRA is to extend the laws of Canada to give effect to the principle that all individuals should have an opportunity equal with others to make for themselves the lives that they are able and wish to have, without being hindered or prevented from doing so by discriminatory practices which are based on race, national or ethnic origin, colour, religion, age, sex, sexual orientation, marital status, family status, disability or conviction for which a pardon has been granted.¹

The Commission promotes the core principle of equal opportunity and works to prevent discrimination in Canada by:

- promoting the development of human rights cultures;
- understanding human rights through research and policy development;
- protecting human rights through effective case and complaint management; and
- representing the public interest to advance human rights for all Canadians.²

The Constitution of Canada divides jurisdiction for human rights matters between the federal and provincial or territorial governments. The federal government regulates employers and service providers in areas such as banking and cross border transportation, as well as “Indians and lands reserved for Indians”. Provinces and territories regulate other sectors such as education and housing (excluding those on Indian reservations) and have their own human rights laws.

The Commission is proud of the leadership role that Canada played in the drafting of the *Convention on the Rights of the Child* (hereinafter referred to as the “*Convention*”), which was ratified in 1991.³ It fully supports the broad civil, cultural, economic, political and social rights enshrined in the *Convention*. 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. It has taken action by investigating complaints, issuing public statements, meeting with

¹ *Canadian Human Rights Act*, RSC 1985, c. H-6, s. 2., available online at: < <http://laws-lois.justice.gc.ca/eng/acts/h-6/>>.

² See Canadian Human Rights Commission 2010 Annual Report, available online at: < http://www.chrc-ccdp.gc.ca/publications/ar_2010_ra/toc_10_tdm-eng.aspx>.

³ *United Nations Convention on the Rights of the Child*, Can. T.S. 1992 No. 3, entry into force 2 September 1990, ratified by Canada on 13 December 1991., available online at: <<http://www2.ohchr.org/english/law/crc.htm>>.

interested stakeholders, and intervening in the public interest in court cases, including cases before the Supreme Court of Canada.

The Commission is committed to working with the Government to ensure continued progress in the protection of children’s human rights in Canada. It is in the spirit of constructive engagement that the Commission submits these comments to the Committee on the Rights of the Child.

The Commission acknowledges the special care and protection needed by all Canadian children, including vulnerable groups such as children belonging to racial, ethnic or religious minorities, children with disabilities and children who are in conflict with the law. That said, this report focuses mainly on Aboriginal children in light of the Commission’s jurisdiction in federal matters and the serious social and economic disadvantages faced by this group.

Part I of this submission outlines the Commission’s concerns regarding Aboriginal children. Part II raises other issues of concern.

2 ABORIGINAL CHILDREN

2.1 Access to Human Rights Protection (Article 2)

Article 2 of the Convention provides a broad protection against discrimination. It says that:

“States Parties shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child's or his or her parent's or legal guardian's race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status.”

In Canada, the *Indian Act*⁴ regulates and affects many aspects of the daily lives of First Nations children. This includes the criteria for having “Indian status”⁵ and band

⁴ The *Indian Act* is a piece of federal legislation that dates back to 1876. Although amended several times, it has remained relatively unchanged. There are over 600 First Nations operating under the broad scope of the *Indian Act*, which sets out the federal government’s obligations and regulates the management of “Indians and lands reserved for Indians”. The Act is outdated and is often criticized for being discriminatory and paternalistic. A more modern approach to governance that recognizes First Nations’ inherent right to self-government is long overdue. Creating this approach will take time and can only be accomplished in consultation and collaboration with First Nations peoples. See *Now A Matter of Rights*, a Special Report of the Canadian Human Rights Commission, June 2011, available at: http://www.chrc-ccdp.ca/proactive_initiatives/nmr_eqd/toc_tdm-eng.aspx.

⁵The *Indian Act* sets out the requirements for determining who is an “Indian” for the purposes of the *Indian Act*. *Indian Act*, R.S.C., 1985, c. I-5., available online at: < <http://laws-lois.justice.gc.ca/eng/acts/I-5/>>.

membership as well as the entitlements that flow from this status, such as housing on reserves, how property is acquired and disposed of and the guardianship of children.

For more than 30 years, section 67 of the CHRA prevented people from filing complaints of discrimination resulting from the application of the *Indian Act*.⁶ The Commission called for the repeal of section 67 in two reports to Parliament; one in 2005 and the other in 2008, arguing that the exclusion of people governed by the *Indian Act* from human rights law was discriminatory and contrary to democratic principles.⁷ Section 67 was finally repealed in 2008 and human rights complaints can now be filed against both the federal government and First Nations community governments in their capacity as employers and service providers operating under the *Indian Act*.

The Commission supports the federal government for taking the necessary step to correct this historic injustice. However, a number of issues could hinder this newly gained access to human rights protection for Aboriginal children. Two key ones are: 1) a possible narrowing of the application of the CHRA and 2) the lack of resources for First Nations to comply with the CHRA.

2.2 Narrowing the Application of the *Canadian Human Rights Act* **(Article 2)**

As mentioned previously, Article 2 provides for broad protection against discrimination.

Section 5 of the CHRA gives the Commission the mandate to address allegations of discrimination based on race and sex in the provision of services, including services provided by the Government. The historic disadvantage suffered by First Nations communities has created an important reliance on essential services funded by the federal government. These include access to potable water, education, housing, and child welfare services.

Human rights complaints have been filed against the Government of Canada alleging discrimination in the provision of services to Aboriginal communities. In response, the Government is arguing to narrow the application of the CHRA by taking the position that the provision of funding is not a ‘service’ under section 5 of the CHRA. This issue is

⁶ s.67 of the *Canadian Human Rights Act* stated: “Nothing in this Act affects any provision of the *Indian Act* or any provision made under or pursuant to the Act”. For more information, see: <http://www.parl.gc.ca/About/Parliament/LegislativeSummaries/Bills_ls.asp?ls=c21&Parl=39&Ses=2>.

⁷ *A Matter of Rights*, Special Report of the Canadian Human Rights Commission on the Repeal of section 67, October 2005, available online at: <http://www.chrc-ccdp.ca/proactive_initiatives/section_67/toc_tdm-eng.aspx>. See also *Still a Matter of Rights*, A Special Report of the Canadian Human Rights Commission on the Repeal of Section 67 of the *Canadian Human Rights Act*, January 2008, available online at: <http://www.chrc-ccdp.ca/proactive_initiatives/smr_tqd/toc_tdm-eng.aspx>.

currently being argued before the courts in Canada, with the Canadian Human Rights Commission representing the public interest.⁸

It was hoped that the repeal of section 67 would be a catalyst for positive change for Aboriginal children, many of whom are living in conditions described as “unacceptable” in a country as rich as Canada.⁹ However, the positive effects of the repeal could be nullified if the Government is successful in narrowing the application of the CHRA. If that were to happen, Aboriginal children would not have recourse if services had a discriminatory impact on them.

The Commission is concerned that they would once again be denied full human rights protection, thereby defeating Parliament’s intent when it repealed section 67 of the CHRA.

2.3 Resources for First Nations to Comply with the *Canadian Human Rights Act (CHRA) (Article 4)*

Under Article 4 of the Convention:

“ States Parties shall undertake all appropriate legislative, administrative, and other measures for the implementation of the rights recognized in the present Convention. With regard to economic, social and cultural rights, States Parties shall undertake such measures to the maximum extent of their available resources and, where needed, within the framework of international co-operation.”

The repeal of section 67 of the CHRA brings new human rights obligations for First Nations governments operating under the *Indian Act*. As of June 2011, First Nations governments can have human rights complaints filed against them based on decisions made in their provision of services to children living on reserve.

⁸ *First Nations Child and Welfare Caring Society of Canada and Assembly of First Nations and Chiefs of Ontario and Amnesty International v. Attorney General*, (2011) 4 CHRT. Available online at: <http://chrt-ctdp.gc.ca/search/files/2011%20chrt%204.pdf> .

⁹ Canada, Report of the Auditor General of Canada to the House of Commons, Chapter 4, First Nations and Family Services Program-Indian and Northern Affairs, May 2008, (Ottawa: Minister of Public Works and Government Services Canada), Chapter 4., available online at: < http://www.oag-bvg.gc.ca/internet/English/parl_oag_200805_e_30714.html >. See also, 2011 report of the Auditor General, Chapter 4, available online at: < http://www.oag-bvg.gc.ca/internet/English/parl_oag_201106_e_35354.html >.

The human and financial resources needed by many First Nations to fully comply with the *Canadian Human Rights Act* are substantial. This involves raising awareness of rights and responsibilities, enhancing capacity to investigate and resolve human rights complaints and modifying policies and infrastructure, for example, making public buildings and schools accessible to children with disabilities. The ability of First Nations to respond will be limited by the amount of funding received from the Government.

The Commission considers it imperative that First Nations governments have adequate resources to protect human rights in their communities.

2.4 Cultural Identity and the *Indian Act* (Articles 2, 3, 8, 30)

Under Article 3(1) of the Convention:

“In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.”

In General Comment No.11 on Indigenous Children and their rights under the Convention, the Committee draws attention to Article 8(2) which affirms that:

*“States Parties undertake to respect the right of the child to preserve his or her identity, including nationality, name and family relations as recognized by law without unlawful interference.”*¹⁰

The Committee also reminds States Parties to “*undertake to respect the right of the child to preserve his or her identity, including their “ethnic identity”*”.¹¹ Article 30 provides:

“...a child belonging to such a minority or who is indigenous shall not be denied the right, in community with other members of his or her group, to enjoy his or her own culture, to profess and practise his or her own religion, or to use his or her own language.”

The *Indian Act* historically discriminated against women and children by granting male Indians and those of patrilineal descent preference in the granting of Indian status. This had the effect of denying Indian status to the grandchildren of Aboriginal women, while granting status to the grandchildren of Aboriginal men.¹² As a result of a court decision in a case where these discriminatory provisions were challenged, the Government took measures to amend the *Indian Act*. This resulted in approximately 45,000 persons

¹⁰ United Nations Committee on the Rights of the Child, *General Comment No. 11 (2009) on the Role of National Human Rights Institutions on Indigenous Children and their Rights under the Convention*, available online <http://www2.ohchr.org/english/bodies/crc/docs/CRC.GC.C.11.pdf>

¹¹ *Ibid.*

¹² For example, see: *McIvor v. Canada*, 2009 BCCA 153 (CanLII), available online: <http://www.canlii.org/en/bc/bcca/doc/2009/2009bccca153/2009bccca153.html>.

becoming entitled to ‘Indian status’ as of January 2011.¹³ However, residual discrimination relating to status and band membership continues to exist. For example, the third generation of Aboriginal children is cut off from registration. This issue is being raised domestically by national Aboriginal groups. Sex-based residual discrimination is also being raised at the international level in the *Sharon McIvor and Jacob Grismer v. Canada* case filed with the United Nations Human Rights Committee in November 2010.¹⁴

The Commission is concerned about the systemic impact of *Indian Act* provisions that determine eligibility for “Indian” registration and, in particular, how denying ‘Indian status’ impacts Aboriginal children, their cultural identity, and their entitlement to programs and services.

2.5 First Nations Children in Care: Overrepresentation and Insufficient Funding (Articles 2, 3 and 20(1))

The Committee has emphasized that under Article 2 of the *Convention* “*the application of the non-discrimination principle of equal access to rights does not mean identical treatment.*”¹⁵ Furthermore, Article 3 requires that the best interests of the child be a primary consideration when States parties are making decisions affecting the child’s well being. Article 20(1) provides “*A child temporarily or permanently deprived of his or her family environment, or in whose own best interests cannot be allowed to remain in that environment, shall be entitled to special protection and assistance provided by the State.*”

There are two issues of concern in regards to First Nations children in care: 1) overrepresentation and 2) insufficient funding provided to First Nations child welfare organizations.

Overrepresentation

Some of the most vulnerable children in Canada are First Nations children, in particular those in government care. A report of the Auditor General in 2008 revealed that the number of on-reserve First Nations children in care has grown considerably over the last ten years. At the end of March 2007, there were approximately 8,300 First Nations children on-reserve living in government care. This represents about eight times the number of children living in care in the general population.¹⁶

¹³ On December 15th, 2010, Bill C-3: Gender Equity in the Indian Registration Act received Royal Assent. For more information, online: <http://www.ainc-inac.gc.ca/br/is/bll/index-eng.asp>.

¹⁴ Ms. McIvor was denied leave at the Supreme Court of Canada. She has now filed a complaint with the United Nations Human Rights Committee, available online at: http://www.fafia-afai.org/files/MCIVORPETITIONSIGNEDGENEVAforSenateprep_2.pdf.

¹⁵ United Nations Committee on the Rights of the Child, *General Comment No.5 (2003) on General Measures of Implementation of the Convention on the Rights of the Child*, para.12, available online at: <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G03/455/14/PDF/G0345514.pdf?OpenElement>

¹⁶*Supra* note 10 at 2.

Insufficient Funding to First Nations Child Welfare Organizations

The Government of Canada is often involved in the design, funding and delivery of services on-reserve that are normally provincial services for other Canadians. The First Nations Child and Family Caring Society of Canada (FNCFCSC) and the Assembly of First Nations (AFN) filed a complaint under the CHRA against the Government. They allege that underfunding for child welfare service organizations on-reserves¹⁷ constitutes discriminatory treatment on the basis of race and that they are underfunded compared to organizations serving non-First Nations children. As a result, First Nations child welfare organizations cannot provide the programs needed to assist First Nations families in crisis. This often translates into higher rates of foster care and lower prospects of surviving a troubled childhood.¹⁸

The AFN, the FNCFCSC, and the Commission have requested that the Federal Court of Canada review a Canadian Human Rights Tribunal decision on this issue. A hearing is expected to take place in 2012.

The Commission is concerned about the impact of overrepresentation and underfunding on Aboriginal children themselves, their families and communities, and Canadian society as a whole.

2.6 Aboriginal Youth in the Juvenile Justice System: Overrepresentation; and Programming (Articles 2, 3, 40, 37)

In addition to Article 2 (non-discrimination) and Article 3 (best interests of the child), Article 37 states that:

“... the arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time.”

¹⁷ A reserve is a tract of land, the legal title to which is held by the Crown, set apart for the use and benefit of an Indian band.

¹⁸ For more information see: Trocmé, N., MacLaurin, B., Fallon, B., Knoke, D., Pitman, L., & McCormack, M. (2006). *Mesnmink Wasatek – Catching a drop of light: Understanding the overrepresentation of First Nations children in Canada’s child welfare system: An analysis of the Canadian incidence study of reported child abuse and neglect (CIS-2003)*. Toronto: Centre of Excellence for Child Welfare. See also: *A Comparison of First Nations and non-Aboriginal Children Investigated for Maltreatment in Canada at: <http://www.fncfcs.com/sites/default/files/docs/First-Nations-Fact-Sheet-Revised-Jan2011.pdf>*.

Article 40 provides that:

“... every child involved in the criminal system has a right to be treated in a manner consistent with the promotion of the child’s sense of dignity and worth...and the desirability of promoting the child’s reintegration and the child’s assuming a constructive role in society.”

The Committee has reminded States Parties that they are required to consider alternatives to judicial proceedings when appropriate.

The Office of the Correctional Investigator (OCI) has raised two issues of concern in regards to Aboriginal youth in the federal correctional system: 1) overrepresentation; and 2) access to programming.

Overrepresentation

The OCI’s 2005-2006 Annual report states:

“Available data also indicate that Aboriginal offenders are significantly over-represented among younger offenders. For example, on May 9, 2006, there were 343 incarcerated offenders aged 20 and younger - 96 or 28 per cent of them were Aboriginal. The situation in the Prairies Region was most problematic as 58 per cent (72 out of 125) of offenders aged 20 and younger were Aboriginal.”¹⁹

Access to Programming

The report further states:

"This Office has often pointed out that the Correctional Service does not meet the special service and program needs of inmates aged 20 and younger. These younger offenders, numbering up to 400 at any given time, very often find themselves in disadvantaged situations - segregation, abuse by other inmates, limited access to and success in programming, gang affiliations, and delayed conditional release.”²⁰

It is well documented that Aboriginal youth are the fastest growing population in Canada. The Commission is concerned that if issues of programming and overrepresentation in a correctional setting are not addressed, the situation will worsen as the population increases. It is the view of many children and justice experts²¹ that federal sentencing reforms currently before Parliament (Bill C-10 *Safe Street and Communities Act*), such as

¹⁹ Office of the Correctional Investigator, 2005-2006 Annual Report available online at: <http://www.oci-bec.gc.ca/rpt/annrpt/annrpt20052006-eng.aspx#IIIB>.

²⁰ *Ibid.*

²¹ For more information see: Canadian Bar Association, submission on the proposed Youth Criminal Justice Act amendments, June 2010, available online at: <http://www.cba.org/CBA/submissions/pdf/10-41-eng.pdf>. See also: Canadian Coalition on the Rights of the Child, submission on Bill C-4, http://rightsofchildren.ca/wp-content/uploads/CCRC_submission_on_Bill_C-4_final.pdf.

mandatory minimum sentences, will exacerbate an already troubling human rights situation for Aboriginal youth.²²

2.7 Aboriginal Children and Poverty (Article 27)

Under Article 27 (1) of the Convention, “*States Parties recognize the right of every child to a standard of living adequate for the child's physical, mental, spiritual, moral and social development.*”

The latest data from Statistics Canada indicate that 610,000 children live below the poverty line, for a national poverty rate of 9.1%. However, Aboriginal children are “*at a higher risk of low income*”. Recent data indicates that 27.5% of Aboriginal children under 15 years of age live in low-income households, whereas the rate among non-Aboriginal children is 12.9%.²³ The Government of Canada’s 3rd and 4th Periodic Report to the UN Committee on the Rights of the Child also recognized that “*High rates of poverty, single-family households, health issues, as well as a lack of social supports, create a gap in life chances between Aboriginal and non-Aboriginal children.*”²⁴ A third of Aboriginal children live in low-income families where food security is a concern.²⁵ The Auditor General has stated that “*social problems on reserves, such as alcohol and drug abuse, family violence, and suicide, are also linked to poor housing conditions.*”²⁶

The Government stated in its 3rd and 4th Periodic Report to the Committee that “*Aboriginal housing remains a priority for the Government of Canada...*”²⁷. However, the issue of poor

²² On the 20 September 2011, the Minister of Justice introduced Bill C-10, *Safe Street and Communities Act*. Part 4 amends the Youth Criminal Justice Act (YCJA) in a number of ways, including emphasizing the importance of protecting society and facilitating the detention of youth persons involved in serious and repeat crimes. The amendments are also meant to: Hold violent young offenders and those that might be violent accountable for their actions; Ensure the protection of society is considered at sentencing by making protection of society a primary goal of the *Act*; Simplify pre-trial detention rules to ensure that, when necessary, violent and repeat young offenders are kept off the streets while awaiting trial; Ensure adult sentences are considered for youth 14 and older who commit serious violent offences (murder, attempted murder, manslaughter and aggravated sexual assault); Require the courts to consider lifting the publication ban on the names of young offenders convicted of “violent offences,” when youth sentences are given; Require police to keep records when informal measures are used in order to make it easier to identify patterns of re-offending; Ensure that all youth under 18 who are given a custodial sentence will serve it in a youth facility. For more information see:

<http://www.parl.gc.ca/LegisInfo/BillDetails.aspx?Mode=1&billId=5120829&Language=E>

²³ A Statistical Profile of Poverty in Canada, Parliament of Canada, September 2009, available online at: <http://www.parl.gc.ca/Content/LOP/ResearchPublications/prb0917-e.htm#a10>.

²⁴ Third and Fourth Reports of Canada, Convention on the Rights of the Child, available online at: <http://www.pch.gc.ca/ddp-hrd/docs/pdf/canada3-4-crc-reports-nov2009-eng.pdf>

²⁵ For more information see the *Indigenous Children's Health Report: Health Assessment in Action*, available online at: http://www.stmichaelshospital.com/pdf/crich/ichr_report.pdf.

²⁶ Canada, Report of the Auditor General of Canada to the House of Commons, April 2003, (Ottawa: Minister of Public Works and Government Services Canada), available online at: http://www.oag-bvg.gc.ca/internet/English/parl_oag_200304_06_e_12912.html, para 6.15.

²⁷ The government’s 3rd and 4th report to the Committee covers the period of January 1998-December 2007. The report states that “*An estimated \$272 million a year is provided to address housing needs on-reserve. This funding supports housing construction of approximately 2,300 new homes and renovation of 3,300 existing houses, as well as ongoing subsidies for 27,000 rental units. Budget 2005 committed \$295*

housing and poverty has been raised at the international level by the UN Special Rapporteur on Adequate Housing. In his general observations following an October 2007 visit to Canada, the former Special Rapporteur identified breaches of Aboriginal peoples' right to housing as well as a general federal government failure to provide a properly funded national poverty reduction strategy as a cause of the crisis of homelessness.²⁸

While there is a significant investment of federal dollars spent each year on federal grants, contributions and subsidies to First Nations and Aboriginal peoples, conditions remain significantly below the national average.²⁹ Poverty poses barriers for Aboriginal children and youth to obtain key lessons in healthy living and self-care on an equal footing to other Canadian children and youth.

2.8 Systemic Violence against Aboriginal Girls (Articles 2, 19)

Under Article 19(1) of the Convention:

*“States Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child.”*³⁰

In a recent report, the Native Women's Association of Canada (NWAC) provided statistical data showing that Aboriginal girls experience sexualized and racialized violence at a higher frequency and with greater severity than non-Aboriginal girls. NWAC reveals the documented stories of 582 Aboriginal women and girls who are missing or have been murdered in the last 30 years.³¹ Of them, 17% were 18 years of age and under.³² Amnesty International has also voiced its grave concerns about discrimination and violence against young Aboriginal women and girls stating that the

million over five years to help address the backlog in housing on reserve.” The report is available online at: <http://www.pch.gc.ca/ddp-hrd/docs/pdf/canada3-4-crc-reports-nov2009-eng.pdf>

²⁸ Canada ratified the International Covenant on Social and Economic Rights on May 19, 1976. Article 11(1) of the Covenant states: 1. The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions. The States Parties will take appropriate steps to ensure the realization of this right, recognizing to this effect the essential importance of international co-operation based on free consent.

²⁹ The Department of Finance states that in 2009-2010 the government spent “8 billion dollars in transfers for First Nations and Aboriginal peoples”, online at: <http://www.fin.gc.ca/tax-impot/2010/html-eng.asp>.

³⁰ Under Article 19(2) “Such protective measures should, as appropriate, include effective procedures for the establishment of social programmes to provide necessary support for the child and for those who have the care of the child, as well as for other forms of prevention and for identification, reporting, referral, investigation, treatment and follow-up of instances of child maltreatment described heretofore, and, as appropriate, for judicial involvement.”

³¹ *What Their Stories Tell Us*, Research Findings from the Sisters in Spirit Initiative, Native Women's Association of Canada, 2010, Ottawa, Executive Summary, online: <http://www.uregina.ca/resolve/PDFs/NWAC%20Report.pdf>.

³² *Ibid.* at 43.

“scale of violence experienced by “Indigenous” women requires a comprehensive and coordinated response from the government of Canada”.³³

In 2010, the Canadian government announced \$10 million in federal funding dedicated to addressing the issue of missing and murdered Aboriginal women and girls. It remains to be seen if this funding will have an impact in addressing the systemic, deep rooted and complex situation of violence against Aboriginal women and girls.

2.9 Aboriginal Children and Health (Article 24)

Under Article 24(1) of the Convention:

“States Parties recognize the right of the child to the enjoyment of the highest attainable standard of health and to facilities for the treatment of illness and rehabilitation of health. States Parties shall strive to ensure that no child is deprived of his or her right of access to such health care services.”³⁴

The federal government supports the publicly funded health care system through transfer payments to provinces and territories. In the case of First Nations on reserves, the Government is directly responsible for the funding of health care and in some cases the delivery of services.³⁵

In 2008, the Auditor General reported disparity in health status between First Nations and Inuit and the general Canadian population.³⁶ Key health indicators, such as birth weights, infant mortality³⁷, and teen pregnancy all suggest a gap with non- Aboriginal peers for these children and youth. Many Aboriginal children and youth also face the challenges and limitations of living with Fetal Alcohol Spectrum Disorder (FASD). Substance abuse is a factor in many young lives. Other concerns include the high rates of diabetes and obesity. For example, First Nations people on-reserve have a rate of diabetes three to five times higher than that of other Canadians. Rates of diabetes among the Inuit are expected to rise significantly in the future given that risk factors such as obesity, physical inactivity, and unhealthy eating patterns are high.³⁸

³³ Canada : Stolen Sisters, A Human Rights Response to Violence Against Indigenous Women, Amnesty International, 2009, online: <http://www.amnesty.ca/stolensisters/amr2000304.pdf>

³⁴ Under Article 24(2) “ States Parties shall pursue full implementation of this right and, in particular, shall take appropriate measures: (a) To diminish infant and child mortality; (b) To ensure the provision of necessary medical assistance and health care to all children with emphasis on the development of primary health care; (c) To combat disease and malnutrition, including within the framework of primary health care, through, inter alia, the application of readily available technology and through the provision of adequate nutritious foods and clean drinking-water, taking into consideration the dangers and risks of environmental pollution;”Convention on the Rights of the Child.

³⁵ For more information see: Health Canada, mandate and priorities, First Nations and Inuit Health Branch, available online at: <http://www.hc-sc.gc.ca/ahc-asc/branch-dirgen/fnihb-dgspni/mandat-eng.php>

³⁶ http://www.oag-bvg.gc.ca/internet/English/parl_oag_200812_08_e_31832.html#ex5, Exhibit 8.5

³⁷ For example, infant mortality rates were approximately four times higher for Inuit than for the Canadian population in 2003.

³⁸ For more information, see Health Canada website: <http://www.hc-sc.gc.ca/fnih-spnia/diseases-maladies/diabete/index-eng.php>.

The government indicated in its 3rd and 4th Periodic Report to the UN Committee on the Rights of the Child that it has “*provided \$1.3 billion over five years to be dedicated to First Nations and Inuit health programs, including new investments for nursing and human capital development on reserve*”.³⁹

The significant disparities outlined above indicate urgent health needs. The Commission remains concerned about the disparity in health status between Aboriginal children and non-Aboriginal children.

2.10 Aboriginal Children and Education (Article 28, 29)

Under Article 28 of the Convention:

“States Parties recognize the right of the child to education, and with a view to achieving this right progressively and on the basis of equal opportunity..”

Furthermore, Article 29 of the Convention provides that “*education of the child shall be directed to the preparation of the child for responsible life in a free society, in the spirit of understanding, peace, tolerance, equality of sexes, and friendship among all peoples, ethnic, national and religious groups and persons of indigenous origin*”.

There are two issues of concern in regards to Aboriginal children and education: 1) insufficient funding; and 2) educational achievement rates.

Insufficient Funding

Although education falls within provincial jurisdiction, the federal government has responsibility in areas where transfer agreements are not in place with provinces.⁴⁰ The federal government funds band councils and other First Nations education authorities to pay for education from kindergarten through to adult learners for residents on reserves.⁴¹ The disparities in funding for education have been documented in a number of reports. An Indian and Northern Affairs Internal Audit report concluded that :

*“INAC’s figures show a level of funding for instructional services per student that ranges between \$5,500 and \$7,500. The Pan-Canadian Education Indicators Project (PCEIP 2003) shows a range of per student expenditures from \$6,800 to \$8,400 across Canada”*⁴²

In June 2011 the Auditor General also reported that:

³⁹ Third and Fourth Reports of Canada to the Committee on the Rights of the Child, available online at : <http://www.pch.gc.ca/ddp-hrd/docs/pdf/canada3-4-crc-reports-nov2009-eng.pdf> see para.67.

⁴⁰ *Ibid.*

⁴¹ For more information see: Caledon Institute of Social Policy, Improving Education on Reserves: A First Nations Education Authority Act, Michael Mendelson, July 2008, p. 4., available online at: <http://www.caledoninst.org/Publications/PDF/684ENG.pdf>

⁴² *Ibid* at 6.

“Although the Department [now Aboriginal Affairs and Northern Development Canada) has studied various delivery options for post-secondary programs, we found that it has not specifically reviewed post-secondary funding mechanisms. As in 2004, (the department) still allocates funds by First Nations community without regard to the number of eligible students; moreover, band governments have the flexibility to allocate the funds outside the program. Again, as in 2004, we found that the current funding mechanism and delivery model used to fund post-secondary education does not ensure that eligible students have equitable access to post-secondary education funding”⁴³

The Government states in its 3rd and 4th Periodic Report to the Committee on the Rights of the Child that it “*continues to support culturally relevant elementary, secondary and post-secondary education for First Nations and Inuit students, with overall expenditures increasing from \$1.4 billion in 2003-2004 to 1.7 billion in 2007-2008*”. While there has been a move towards First Nations control over education in the past few years and an increase in funding, it appears that adequate funding is still a critical issue.

Education Achievement Rates

In Canada, many First Nations children do not have the opportunity to access education in conditions of true equality. Educational achievement rates show that Aboriginal children dramatically lag behind other Canadian children.⁴⁴

“ In 2006, the proportion of the Aboriginal population aged 25 to 64 years without a high school diploma (34%) was 19 percentage points higher than the proportion of the non-Aboriginal population of the same age group (15%). There is no disparity between Aboriginal and non-Aboriginal groups for college and trade certification; certification was obtained by 33% of both populations. Whereas 23% of the non-Aboriginal population had successfully completed a university degree, only 8% of the Aboriginal population reported completing a university education”⁴⁵

It is also important to note that “*the majority of Aboriginal children and youth live in urban centres and attend non-Aboriginal schools where they continue to lag behind their peers*”.⁴⁶ Educational achievement is crucial to closing the gaps in income and other social indices between Aboriginal and non-Aboriginal people. However, there is no

⁴³ Canada, Report of the Auditor General of Canada to the House of Commons, June 2011, (Ottawa: Minister of Public Works and Government Services Canada). Available online at: http://www.oag-bvg.gc.ca/internet/English/parl_oag_201106_04_e_35372.html#hd5e, see para. 4.21.

⁴⁴ Human Resources and Skills Development Canada, Indicators of Well-being in Canada, Learning-Educational Attainment, information available at: http://www4.hrsdc.gc.ca/3ndic.lt.4r@-eng.jsp?iid=29#M_4.

⁴⁵ *Ibid.*

⁴⁶ Canadian Council of Provincial Child and Youth Advocates, *Aboriginal Children and Youth in Canada: Canada must do Better*, at p.9-10. Available online at: <http://www.rcybc.ca/Images/PDFs/Reports/Position%20Paper%20June%2016%20FINAL.pdf>

national strategy to redress educational inequality for Aboriginal children across the country.

3 OTHER ISSUES OF CONCERN

3.1 Suicide among Children and Youth (Article 27)

Under Article 27 of the Convention, States Parties:

“...shall ensure that the child has access to information and material from a diversity of national and international sources, especially those aimed at the promotion of his or her social, spiritual and moral well-being and physical and mental health.”

According to Statistics Canada, the rate of suicide has remained relatively stable in Canada over the past few years. A recent Statistics Canada report reveals that 28 children ages 10-14 committed suicide in 2004 and 25 committed suicide in 2009. In the 15-19 age group, 210 committed suicide in 2004 and 208 in 2008.⁴⁷ However, a number of studies point to higher rates among vulnerable groups including recent immigrants, inmates in correctional facilities, youth suffering from mental illness and Aboriginal youth.⁴⁸ The Mental Health Commission of Canada has reported that the rate of suicide among Aboriginal youth compared to non-Aboriginal youth is five to six times higher.⁴⁹

The Canadian Mental Health Association reported that::

“In Canada, suicide accounts for 24 percent of all deaths among 15-24 year olds and 16 per cent among 16-44 year olds. Seventy –three percent of hospital admissions for attempted suicide are for people between the ages of 15 and 44.”⁵⁰

Research studies show that suicide is the number one cause of death for sexual minority youth. Sexual minority youth are up to 7 times more likely to attempt suicide than their heterosexual peers.⁵¹ They also face unique risk factors that include “*lack of family*

⁴⁷ For more information, see: Statistics Canada report, available online at:

<http://www40.statcan.gc.ca/l01/cst01/hlth66a-eng.htm>

⁴⁸ For more information see the Canadian Mental Health Association, fact sheet available online at: http://www.ontario.cmha.ca/fact_sheets.asp?cID=3965. See also, World Health Organization (October 2002). World Report on Violence and Health. Geneva. www.who.int.

⁴⁹ For more information see the fact sheet: Our Journey our Beginning, Mental Health Commission of Canada, available online at : <http://www.mentalhealthcommission.ca/SiteCollectionDocuments/brochures/References%20for%20On%20Our%20Way%20map.pdf> .

⁵⁰ For more information see: Canadian Mental Health Association , http://www.ontario.cmha.ca/fact_sheets.asp?cID=3965

⁵¹ Public Health Agency of Canada, *Questions and Answers: Sexual Orientation in Schools*, available online at: <http://www.phac-aspc.gc.ca/publicat/qasos-qose/qasos-qose-eng.php#footnote20>.

acceptance, and more frequent interpersonal conflict (such as bullying) regarding their sexuality”.⁵²

In its 3rd and 4th Periodic Report to the UN Committee on the Rights of the Child, Canada stated that:

*“The Federal Budget 2005 provided \$65 million over five years to implement the National Aboriginal Youth Suicide Prevention Strategy. The Strategy provides direct support to First Nations and Inuit to improve the mental health of youth and to design and deliver community-based suicide prevention plans.”*⁵³

The Federal 2010 Budget indicates funding has been allocated for another two years. The Commission supports the renewal decision. However, stable ongoing funding is required given the devastating impacts of suicide on Aboriginal families and communities.⁵⁴

Suicide has been described as “*a major, sometimes hidden, public health concern*”.⁵⁵ The House of Commons has recognized this and recently passed a motion to support a national suicide prevention strategy for all Canadian children and youth.⁵⁶

The Commission supports the immediate development and implementation of such a strategy with appropriate funding to support the initiative.

3.2 Monitoring the Implementation of the Convention (Articles 2,7,23, 24)

Under Article 2 of the Convention, disability is explicitly mentioned as a prohibited ground of discrimination. Under Article 23(1):

⁵² Public Health Agency of Canada, *Questions and Answers: Sexual Orientation in Schools*, “One Canadian study found that lesbian, gay, and bisexual youth, when compared to their heterosexual peers, were more likely to: have had suicidal thoughts and a history of suicide attempts; experience greater physical and sexual abuse; have higher rates of harassment in school and discrimination in the community; have run away from home once or more in the past year; be sexually experienced and have either been pregnant or to have gotten someone pregnant; be current smokers, tried alcohol, or used other drugs; report higher rates of emotional distress; participate less frequently in sports and physical activity; report higher levels of computer usage/time; and, feel less cared about by parents/caregivers and less connected to their families.” For more information see: <http://www.phac-aspc.gc.ca/publicat/qasos-qose/qasos-qose-eng.php#footnote20>.

⁵³ Third and Fourth Reports of Canada, Convention on the Rights of the Child, available online at: <http://www.pch.gc.ca/pgm/pdp-hrp/docs/crc-rpt3-4/index-eng.cfm>, para 71.

⁵⁴ Budget 2010: Leading the Way on Jobs and Growth, available online at: <http://www.budget.gc.ca/2010/plan/toc-tdm-eng.html>, p. 119.

⁵⁵ For more information see: the Mental Health Commission of Canada website at: <http://www.suicideprevention.ca/>.

⁵⁶ The motion to support the establishment of a National Suicide Prevention Strategy carried with 272 votes in favour and 3 against. <http://joycemurray.liberal.ca/uncategorized/statement-in-the-house-liberal-motion-for-a-national-suicide-prevention-strategy/>

“ States Parties recognize that a mentally or physically disabled child should enjoy a full and decent life, in conditions which ensure dignity, promote self-reliance and facilitate the child's active participation in the community.

Under Article (2):

“States Parties recognize the right of the disabled child to special care and shall encourage and ensure the extension, subject to available resources, to the eligible child and those responsible for his or her care, of assistance for which application is made and which is appropriate to the child's condition and to the circumstances of the parents or others caring for the child.”

Under Article 24, States Parties:

“...shall strive to ensure that no child is deprived of his or her right of access to such health care services.”

Canada ratified the *Convention on the Rights of Persons with Disabilities (CRPD)* in 2010. Article 7 of the CRPD⁵⁷ provides that States parties are required to *“take all necessary measures to ensure the full enjoyment by children with disabilities of all human rights and fundamental freedoms on an equal basis with other children.*

States are responsible for ensuring the implementation of international human rights obligations. Monitoring is an essential part of this implementation. In addition to Article 4 of the Convention on the Rights of the Child, Article 33 (2) of the CRPD requires that State parties:

“.. maintain, strengthen, designate or establish ... one or more independent mechanisms ... to promote, protect and monitor implementation ... (and) shall take into account the principles relating to the status and functioning of national institutions for protection and promotion of human rights.”⁵⁸

At present, the Government of Canada has not designated an independent monitoring mechanism under article 33. The Commission, as an “A”status national human rights institution, has indicated its willingness to take on this responsibility.

3.3 Establishing a Focal Point for Responsibility (Article 4)

Article 4 of the Convention provides that:

⁵⁷ *Convention on the Rights of Persons with Disabilities*, adopted by the United Nations General Assembly on 10 of December 2006, entered into force on 3 May 2008. Canada ratified the Convention in March of 2010. Available online at: <http://www.un.org/disabilities/convention/conventionfull.shtml>.

⁵⁸ *Ibid* at article 33.

“ States Parties shall undertake all appropriate legislative, administrative, and other measures for the implementation of the rights recognized in the present Convention. With regard to economic, social and cultural rights, States Parties shall undertake such measures to the maximum extent of their available resources and, where needed, within the framework of international co-operation.”

In its 3rd and 4th Periodic Report to the UN Committee on the Rights of the Child, the Government stated that:

*“Canada endeavours to strengthen coordination and monitoring of children’s rights through interdepartmental and intergovernmental initiatives. An Interdepartmental Working Group on Children’s Rights was created in 2007 to promote a whole-of-government approach to children’s rights and to encourage collaboration among federal departments.”*⁵⁹

The absence of a federal monitoring body to ensure the effective implementation of the *Convention* and the protection of children’s rights in Canada has been highlighted by a number of national and international organizations, including the Committee on the Rights of the Child,⁶⁰ the Senate Standing Committee on Human Rights,⁶¹ and civil society. All of these emphasize that although specialized bodies are operating in nine provinces, there is no independent body at the federal level with the mandate to conduct activities to implement the *Convention*. These activities would include ensuring uniform human rights standards for children across the country, reviewing legislation, raising awareness, and providing expert advice on children’s rights to the courts.

3.4 Incorporating the Convention into Canada’s Domestic Law (Article 4)

As mentioned previously, Article 4 of the *Convention* provides that States Parties must take all appropriate legislative, administrative, and other measures for the implementation of the rights recognized in the *Convention*.

In General Comment No. 5 on General Measures of Implementation of the *Convention* on the Rights of the Child, the Committee noted that:

⁵⁹ *Supra* note 55 at 34.

⁶⁰ Concluding Observations of the Committee on the Rights of the Child, “*The Committee recommends that the State party establish at the federal level an ombudsman’s office responsible for children’s rights and ensure appropriate funding for its effective functioning.*” para 15. Available online at: <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G03/446/48/PDF/G0344648.pdf?OpenElement>.

⁶¹ *Children: the Silenced Citizens*, *supra* note 19, pp. 207-210.
<http://www.parl.gc.ca/Content/SEN/Committee/391/huma/rep/rep10apr07-e.pdf>.

*“Ensuring that all domestic legislation is fully compatible with the Convention and that the Convention’s principles and provisions can be directly applied and appropriately enforced is fundamental.”*⁶²

Although Canada has ratified the Convention, it has never introduced legislation incorporating it into its laws. Over the years, the Senate Standing Committee on Human Rights has issued reports highlighting concerns about the effective implementation of Canada’s international obligations with respect to the rights of the child. It has urged the Government of Canada to take steps to ensure incorporation of the *Convention* and has elaborated a way forward.⁶³

In order for the Convention to have full legal effect in domestic law, Canada must, as a “dualist” state, directly incorporate the Convention by introducing enabling legislation; otherwise the Convention on the Rights of the Child has no legal effect in Canada.⁶⁴

4 CONCLUSION

The Commission has focused this report on the inequities and discrimination faced by Aboriginal children in Canada, in particular the systemic barriers caused by *Indian Act* provisions, the overrepresentation in government care, the insufficient level of health care services, unequal educational opportunities, Aboriginal youth in the criminal justice system, and violence against Aboriginal girls. Report after report has documented the same concerns showing that a disproportionate number of Aboriginal people still do not benefit from the most basic services that other Canadians take for granted. Despite the numerous calls for action both within Canada and abroad, the situation for many Aboriginal children remains unsatisfactory.

The Commission also wishes to acknowledge the special care and protection needed by all Canadian children, including other vulnerable groups such as children belonging to racial, ethnic or religious minorities, children with disabilities and children who are in conflict with the law.

⁶² *General Comment No. 5 on General Measures of Implementation on the Convention on the Rights of the Child*, available online at: <http://tb.ohchr.org/default.aspx?Symbol=CRC/GC/2003/5> at 1.

⁶³ *Supra* note 3. See also: Canada, Parliament, Senate, *Promises to keep, Implementing Canada’s Human Rights Obligations*, available online at: <http://www.parl.gc.ca/Content/SEN/Committee/371/huma/rep/rep02dec01-e.htm>.

⁶⁴ *Ibid*, *Promises to Keep, Implementing Canada’s Human Rights Obligations*, at b)i).