UN Committee on the Rights of the Child

 Canada - Pre-Session Working Group

 **SUPPLEMENTARY SUBMISSION**

 **to**

 **Special Report on Aboriginal Children –**

 **Canada Must Do Better: Today and Tomorrow**

**Prepared for:**

UN Committee on the Rights of the Child

February 6, 2012

**Submitted by:**

Canadian Council of Child and Youth Advocates

**1. Introduction**

We, the Canadian Council of Child and Youth Advocates, submitted our *Special Report on Aboriginal Children - Canada Must Do Better: Today and Tomorrow* (‘Special Report’) for the UN Committee’s consideration at its forthcoming pre-session working group in February 2012. In that report, we provided information about our work.

We provide this *Supplementary Submission* to assist the UN Committee further in its consideration of issues specific to Aboriginal children. Collectively we have:

* identified common, critical systemic issues affecting children across Canada;
* advocated with governments and others about these issues;
* made policy recommendations;
* identified that Aboriginal children face particular challenges in realizing their rights and that these challenges require urgent attention.

**2. Aboriginal Children**

As indicated in our Special Report, Aboriginal children in Canada bear the impacts of a ‘legacy of colonialism, racism and exclusion’. These children:

* include First Nations, Metis, and Inuit children living in all provinces/territories in Canada;
* live as distinct populations of indigenous peoples who face unique challenges, have differing priorities, are impacted in various ways by policies;
* constitute the fastest growing population of children in Canada;
* have succeeded as individuals; however, as a group they experience disadvantaged life circumstances and poorer outcomes as compared to non-Aboriginal children in Canada.

**3. Special Report: Main Messages**

The predominant messages in our Special Report are:

* as a group, Aboriginal children, intersecting with all vulnerable children, do not realize their human rights to the fullest extent possible;
* Aboriginal children’s dire circumstances are not new – we have known about them for many years;
* initiatives have been put in place and some Aboriginal children’s lives are better;
* many Aboriginal children, however, continue to experience human rights violations;
* root causes have not been adequately acknowledged and addressed;
* Aboriginal children’s human rights realization must become Canada’s priority in 2012 and beyond;
* special measures are required, immediately, to make this goal a reality;
* when Aboriginal children are realizing their rights, other vulnerable children will as well.

By submitting our Special Report and participating in the UN Committee’s review, we:

* reflect the voices and circumstances of vulnerable children who require us, as adults, to listen and respond in meaningful ways;
* offer recommendations – a blueprint – for improving human rights implementation across Canada in ways that reflect a national perspective;
* hope to influence change in tangible, immediate and effective ways that will benefit children’s lives and ensure the realization of children’s human rights in Canada.

**4. Sharing the Vision: Commitment to Children’s Human Rights**

The UN Committee, Canada, Canada’s provinces/territories, NGOs, Aboriginal communities/organizations, child rights advocates and others are **united** in our awareness that barriers exist to Aboriginal children, and other children, realizing their entitlements. We are united in our desire to eliminate those barriers and to create better lives for Aboriginal children and all children in Canada. And, we are united in our understanding about our moral and legal obligations to implement children’s human rights.

**Challenges** exist about how we demonstrate a unified **commitment** to a rights-based approach to addressing children’s issues that will make our vision a reality. We need to consider how we shift our shared vision to coordinated action with positive results for Aboriginal children. We are **concerned**, therefore, about the erosion of Canada’s stated commitment to implementation of the *Convention on the Rights of the Child* (CRC); the possible connection between that erosion and dire circumstances facing Aboriginal today; and Canada’s lack of leadership in its 2009 report to ensure children experience the full realization of their human rights.

**5. Canada and Child Rights: Historical Context**

By placing Canada’s 2012 review in its historic context, it is possible to see how early in the years subsequent its CRC ratification, Canada made a strong commitment to CRC implementation while concurrently recognizing that Aboriginal children faced particular challenges, which required targeted efforts to address.

Eighteen years ago, in **1994** Canada made its first report to the UN Committee, stating that ‘…Canada recognizes that there is a **greater need** to ensure the full realization of Convention rights for poor children and Aboriginal children…’ In **2003** Canada made its second report to the UNC stating ‘…Canada **firmly** **believes** that its actions must be **guided by the [CRC]**...’

In **2007** Canada stated[[1]](#footnote-1) that it:

* …remains committed to children’s well-being, to meeting Canada’s **international** **CRC obligations**…;
* …recognizes and values the Children's Advocates and Ombudspersons in the provinces and territories important work on children's issues…;
* believes that access to and **protection of human rights is of paramount importance** and that this should apply to all Canadians, regardless of whether or not they live on reserves…

In **2009** Canada made its third and fourth reports to the UN Committee:

* Although challenges remain, **governments** continue to make concerted efforts to improve the lives of children in Canada and further enhance the implementation of the CRC.
* …Canada takes a child rights-based approach to **international** cooperation efforts for children, using the CRC as its guiding framework. Canada aims to increase [child rights] realization… in **partner countries**...
* The **best interests** of the child are an important **consideration** in the development of legislation, programs and policies that concern children.

**6. Challenges and Barriers**

Challenges and barriers prevent Aboriginal and other children from experiencing full implementation of the CRC in Canada. Canada’s reports to the UN Committee tell us, for example, that:

* challenges and barriers identified prior to 1994 remain;
* programs, initiatives have existed to improve Aboriginal children’s lives;
* gaps in life chances remain for Aboriginal children as compared to non-Aboriginal children.

In **1994** Canada’s first report (informed by ‘consultations’ with Aboriginal groups)[[2]](#footnote-2) identified Aboriginal children as ‘at risk’ and a future priority, noting high rates of:

* substance abuse;
* time in alternative care;
* violence;
* mental health problems;
* infant, child mortality;
* time in justice system;
* homelessness ;
* suicide;
* high school incompletion;
* contact with child, family services.

Concerns identified in the report also related to:

* Aboriginal children’s treatment in criminal justice and education systems;
* differing treatment of Aboriginal children without status than those Aboriginal children with status;
* retaining cultural identities and language;
* accessibility to ‘appropriate’ services in communities, such as prevention services, community health programs;
* availability of culturally sensitive services;
* injury prevention;
* environmental contaminants affecting pregnancy, child development;
* poor water quality, affecting child health;
* inadequate housing conditions, including overcrowding, poor maintenance;
* lack of access to ‘amenities’, such as youth activities ,community programs, and effects on well-being;
* Aboriginal children’s poor understanding of the justice system.

In **1995** the UN Committee expressed concern about the ‘**special problems**’ still affecting children from vulnerable and disadvantaged groups, such as Aboriginal children, and the realization of their fundamental rights (ie access to housing and education). The UN Committee recommended that Canada:

* ensure children from vulnerable, disadvantaged groups, such as Aboriginal children, benefit from **positive measures** specific to education, housing;
* develop **research** on problems re: infant mortality, suicide among Aboriginal children;
* give **particular attention** to children living in poverty; child immigrants; vulnerable groups such as Aboriginal children.

In **2001** Canada submitted its second report, with a supplementary document, to the UN Committee (1993 to 1997) noting that:

The statistics that follow demonstrate that overall, Aboriginal people in Canada fare less well than other Canadians, and **…Canada recognizes that, for some Aboriginal people, the situation is dire…**

…[the] majority of Aboriginal children still fall below the Canadian average in a range of child health indicators. This discrepancy is a **concern** for …. Canada…

While the concerns identified in 1994 remained the same in 2001, the added identified concerns were:

* poor data collection and analysis relating to health and well-being, including disabilities;
* poor prenatal nutrition;
* poverty;
* Aboriginal children’s overrepresentation in the justice system.

In **2003,** Canada appeared before UN Committee, which asked Canada to identify the ‘…issues affecting children that [it] considers…**priorities** requiring the most urgent attention with regard to the implementation of the Convention.’ In response, Canada identified **Aboriginal children**, including their health status, and over-representation in child welfare and youth justice systems. Other priorities, particularly relevant to Aboriginal children, related to these areas:

* child maltreatment, violence against children, family violence;
* children’s environmental health;
* children living in poverty;
* children’s mental health;
* children with disabilities;
* education;
* fetal alcohol spectrum disorder;
* health care renewal;
* healthy living including healthy weights, physical activity;
* housing;
* parenting supports;
* participation of children in matters affecting them;
* sexual exploitation and trafficking of children;
* tobacco demand reduction amongst youth;
* youth criminal justice;
* youth employment.

In **2003,** the UN Committee’s Concluding Observations to Canadaexpressed concern that Aboriginal children continued to experience problems, including **discrimination**…with much greater frequency and severity than non-Aboriginal children. The UN Committee urged Canada to improve its efforts to address the **gap in life chances** between Aboriginal and non-Aboriginal children.

In **2004,** the UN Special Rapporteur on Human Rights/Fundamental Freedoms of Indigenous Peoples reported that Canada needed to improve its implementation of indigenous human rights, stating that:

 … Aboriginal people are justifiably concerned about continuing **inequalities** in the attainment of economic and social rights...

 **Priority attention** must be given to the persistent **disparities** between Aboriginal people and other Canadians as reflected in higher **poverty** rates and **lower than average health, educational, housing and welfare services** for Aboriginal people…

In **2004** Canada committed to **closing the gap between life chances** between Aboriginal children and non-Aboriginal children and to:

* strengthening preventative measures for Aboriginal children in the child welfare system;
* working with others to improve Aboriginal education outcomes;
* building supportive environments to improve Aboriginal children’s healthy development;
* ensuring community-driven, integrated approaches to improve Aboriginal children’s well-being;
* developing partnerships, coordination among all sectors to promote, support indigenous, holistic responses.

In **2006** Statistics Canada reported on high rates of **poverty** among Aboriginal children.

In **2007** Canada’s Senate Committee noted that Aboriginal children were living **disproportionately** in **poverty**, involved in the **youth criminal justice, child protection** systems. In response, Canada said that ‘Aboriginal children, living on or off reserve, face many challenges.

In **2008**, according to a Canadian Incidence Study, Aboriginal children were **overrepresented alternative care** and experienced higher numbers of **child maltreatment** investigations than non-Aboriginal children.

In **2009** Canada submitted its third and fourth Report to the UN Committee. Canada acknowledged 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.”

In **2009** UNICEF reported that Aboriginal children continued to **lag behind** non-Aboriginal children in Canada in:

* most health status indicators;
* the determinants of health and well-being (ie poverty, access to clean water).

In **2010** the CCCYA reported in the public realm on **serious systemic issues** for Aboriginal children, highlighting those issues as nationally important and requiring urgent attention.

In **2011** a Campaign 2000 report identified that approximately 1/4 Aboriginal children lived in **poverty** compared to 1/10 non-Aboriginal children. Canada’s Auditor General reported **serious systemic issues** affecting Aboriginal children, registering concern that Canada supported programs, directed at addressing social and economic challenges, **still** resulted in First Nations reserve conditions significantly below the national average and that more progress had not been made.

The **CCCYA** submitted its **Special Report to UN Committee.** The Special Report identifies the same concerns, circumstances, barriers, and gaps existing today for Aboriginal children as existed in 1994, despite our child rights obligations under the CRC. The Special Report notes that Aboriginal children continue to experience high rates of:

* infant mortality;
* FASD;
* respiratory illnesses, diabetes, other chronic diseases;
* malnutrition;
* disabilities;
* obesity;
* alternative care;
* poor educational attainments;
* poverty.

And, Aboriginal children experience high rates of:

* suicide;
* depression;
* substance abuse;
* representation in the welfare system;
* representation in justice systems.

The Special Report identifies that Aboriginal children experience:

* lower child immunization rates;
* poorer nutritional status;
* substandard housing characterized by crowding, the need for repairs, poor water quality;
* lack of access to quality food leading to preventable chronic health conditions;
* inadequate opportunities to exit the cycle of poverty;
* inadequate opportunities in rural communities, on reserves to participate in recreation activities and sports.

The Special Report notes that we – as a society - have become better at identifying that:

* the legacy of residential schools and colonialism in Canada has impacted current generations of Aboriginal children;
* socio-economic, environmental, historical factors have contributed to poor outcomes for Aboriginal children as compared to non-Aboriginal children;
* poverty, geographical inaccessibility, cultural insensitivities, and language barriers compound challenges that exist;
* systemic discrimination towards Aboriginal children and their families remains.

**7. Aboriginal Children in 2012**

Today, in 2012, many of us – individuals, governments, civil society, communities know that:

* Canada committed to making Aboriginal children a priority in 1994;
* since 1994, Canada and others, have promoted initiatives to improve Aboriginal children’s lives;
* in 2001, Canada stated that the situation facing Aboriginal children was ‘dire’;
* in 2012, child rights advocates, governments, Aboriginal peoples, NGOs and others continue to identify Aboriginal children’s situation as dire and critical, requiring urgent attention;
* we are at a critical juncture in Canada where we need to renew our commitment to making Aboriginal children and human rights implementation priorities;
* many individuals, communities and organizations are committed to Aboriginal children and work hard to improve Aboriginal children’s lives with positive results;
* governments – federal, provincial and territorial – can do better, however, for Aboriginal children and their families.

**8. The Way Forward**

Collectively, we advocate for Aboriginal, and all, children. In this role, we propose a committed, unified, holistic and evidence-based agenda directed at improving human rights implementation for Aboriginal children. There are initial first steps – special measures - to take along this path. We can begin by:

* renewing our commitment to child rights implementation in tangible ways;
* directly hearing the voices of Aboriginal children, their communities, and working more collaboratively to respond in meaningful ways;
* improving research methods, such as coordinating and disaggregating data, and developing a body of managed evidence-based research to inform practice/policy development from a holistic, child rights perspective;
* coordinating efforts to identify and disseminate information about good practices/policies that reflect a child rights lens;
* implementing good practices/policies while monitoring and evaluating practices/policies from a child rights perspective;
* focusing on practices/policies’ effectiveness and outcomes for Aboriginal children;
* improving accountability and transparency in CRC implementation;
* establishing a federal Children’s Commissioner.

Through Canada’s CRC 2012 review, we have the opportunity to establish benchmarks against which to measure child rights implementation at Canada’s next review. We can immediately adopt special measures designed to improve lives of all vulnerable children. And, we can lead the world in caring for our children and implementing their human rights.

**9. Conclusion**

Canada is among the most prosperous nations in the world.

It is shameful that we have such high numbers of children, such as Aboriginal children, living in poverty and unable to realize their most basic entitlements to quality education, healthcare, safety and a reasonable standard of living.

We can do better in Canada – today and into the future for Aboriginal and all children.

 **APPENDIX A**

 **QUESTIONS FOR CANADA**

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

**All children:**

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

**Aboriginal children:**

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

**APPENDIX B**

**RECOMMENDATIONS**

These recommendations, summarized below and grouped according to themes, are also located in our Special Report in their fuller version:

**Research and moving forward**

R3. That Canada convene a special conference of federal/provincial/territorial representatives, with Aboriginal leaders and child delegates, to explore key issues specific to AC…

R4.  That Canada facilitate the development, adoption and use of child impact assessments for proposed legislation, policies, programs and budgets affecting children’s lives, making the results of these assessments publicly available.

R10. That Canada establish a national Aboriginal Children’s Institute for Research…

R20.  That Canada collaborates on initiatives with Aboriginal organizations to examine quality research and partnership contributions exploring the relationship between systemic factors, abuse and neglect and Aboriginal children’s placement in alternative care...

R23.  That Canada adopt monitoring and evaluative strategies in association with their health initiatives to encourage better policy decision-making and more accurate reporting about outcomes in Aboriginal child health…

**Federal Children’s Commissioner**

R8. That Canada establish a federal Children’s Commissioner role with a human rights mandate, consistent with the Paris Principles and General Comments 2 and 5, to address significant issues affecting children’s lives[[3]](#footnote-3), including the lives of Aboriginal children…

R9. That Canada establish a federal Children’s Commissioner role that ensures that children have access to justice, including access to effective non-judicial administrative mechanisms for hearing their concerns and providing remedies to human rights violations.

R16.  That the future federal Children’s Commissioner’s mandate promotes child participation, including the participation of children who have concerns and are seeking redress for possible wrongdoing.

R17.  That the future federal Children’s Commissioner’s mandate is coordinated with provincial child advocacy mandates to facilitate the implementation of children’s participatory rights equally across Canada and to ensure children’s views inform policy decision-making about matters affecting their lives.

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

**Planning**

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

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

R2. That Canada develop and implement an Aboriginal children’s national plan… It is critical that this plan is linked to an Aboriginal child poverty reduction strategy with measurable outcomes.

R14. That Canada, in collaborative partnerships, establish a national Aboriginal children’s participation initiative...

**Budgetary analysis and allocation**

R5. That Canada make it a priority to improve its current analysis of budgetary decision-making and its impact on children…

R6. That Canada expand the areas currently reported upon; correlate this expansion with improved data collection methods; and adopt a budget accountability model…

R7. That Canada utilize its improved budgetary analysis to inform, develop and implement a national children’s budget with clearly targeted funding intended to improve children’s lives…

R14.  That Canada designates funding for educational child rights programs that include training, led by Aboriginal organizations, about the best interests principle and its practical application for families, communities and service providers who have responsibilities for Aboriginal children.

R21.  That Canada provide more community-based, culturally appropriate and properly funded health services in Aboriginal communities to address critical health issues among Aboriginal children and to ensure that Aboriginal children have access to the same standard of health care as other Canadian children.

R24.  That Canada improve its investment in health infrastructure within remote communities by promoting initiatives, such as video links, that make quality health care more accessible within those communities.

R25.  That Canada provide educational incentives to encourage Aboriginal youth, and adults, to train in health related fields and work in Aboriginal communities.

R29. That Canada provide targeted funding to programs that promote internet safety among children and adults with responsibilities for children.

**Non-discriminatory practices**

R11.That Canada and others responsible for implementing Aboriginal children’s right to be free from discrimination ensure equality in funding for all Aboriginal children requiring child welfare, health and education services.

R12.  That Canada fully implement ‘Jordan’s Principle’ and monitor its implementation.

**Partnership initiatives**

R15.  That Canada, in collaborative partnerships, establish a national Aboriginal child participation initiative, with an emphasis on child rights education and the implementation of participatory rights so as to contribute to CRC overall implementation, raise the profile of Aboriginal children and reduce their vulnerability.

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

R22.  That Canada promote accountable, coordinated partnerships among federal, provincial, territorial and Aboriginal bodies responsible for Aboriginal health care and ensure that those partnerships address key issues related to funding, service delivery, infrastructure and equal access to quality health care.

R27. That Canada, together with Aboriginal representatives and the provinces and territories, develop and implement a national framework on education for all Aboriginal children residing in areas subject to federal jurisdiction...

R30.  That Canada, provinces, territories and Aboriginal communities, through their collaborative work, promote the development and implementation of holistic services for child victims of trafficking, sexual exploitation, homelessness and related issues through funding initiatives.

R36.  That Canada develop and implement a national multi-jurisdictional framework to address the rights of children with mental illnesses or severe behavioural and developmental disorders. Federal, provincial and territorial and Aboriginal representatives should develop this framework in collaboration with key partners, including researchers.

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

**Child welfare and special protection: Canada**

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

R28. That Canada immediately establish a national commission to examine child trafficking, sexual exploitation and homelessness and their interconnectedness with other issues such as violence and child abuse…

R31.  That Canada fully implement the provisions within the UN Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography and the UN Convention against Transnational Organized Crime and its Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (Trafficking Protocol).

R33.  That Canada utilize the Best Practice Statement: Separated Children in Canada to meet its CRC obligations to refugee, unaccompanied and separated children.

R37. That Canada reinforce the protection and rehabilitation of children as interdependent objectives, both of which are interrelated principles guiding decision-making under the YCJA.

**Legislation enactment and reviews**

R13.  That Canada conduct a review of the ‘best interests principle’ adoption into federal legislation concerning children, legal procedures in federal courts, judicial and administrative decisions, projects, policy, programs and services that have an impact on children.

R32.  That Canada review its legislation, along with the provinces and territories, for compliance with the UN Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography and the UN Convention against Transnational Organized Crime and its Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (Trafficking Protocol).

R34.  That Canada review and amend, where necessary, its legislation, regulations and practices related to refugee, unaccompanied and separated children to ensure full compliance with its CRC obligations.

R35.  That Canada fully implement the YCJA by providing the provinces and territories, which have administration responsibilities for the Act, with funding for non-custodial options in it.

R38.  That Canada ensure that any future proposed changes to the Canadian youth criminal justice system comply with the provisions and the spirit of the CRC.

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

1. Statements made in an undated response to the Senate Committee’s 2007 report. [↑](#footnote-ref-1)
2. Para 385. ‘At the request of national Aboriginal organizations, upon ratification of the present Convention Canada made a reservation to the effect that article 30 would have to be taken into account in implementing all of the articles of the Convention in matters relating to Aboriginal children.’ [↑](#footnote-ref-2)
3. The Commission des droits de la personne et des droits de la jeunesse of Quebec agrees with this recommendation, insofar as the National Children’s Commissioner’s mandate respects the constitutional distribution of legislative powers. [↑](#footnote-ref-3)