

NGO Group for the Convention on the Rights of the Child
**Database of NGO Reports presented to the UN Committee on
the Rights of the Child.**

Document Title:

**Brief to the Committee on the Rights of the Child On the Situation of
Children of Non-citizens in Canada**

Region:

North America

Country:

Canada

Issued by:

Inter-Church Committee for Refugees (ICCR)

Date of publication of NGO Report:

11/94

Date of presentation to preessional working group:

09/94

CRC Session

(at which related national state party report was submitted):

09th Session : May - June 95

Language:

English

Document Text

[Link to related state party report at UNHCHR in English](#)

[Link to related state party report at UNHCHR in French](#)

NOVEMBER 1994

INTRODUCTION

1. The Inter-Church Committee for Refugees (ICCR) welcomes the opportunity to comment on Canada's compliance with its obligations under the Convention on Rights of the Child (CRC). Our Committee is an ecumenical coalition of ten national Christian churches, with the mandate to coordinate and support the member churches in their work with refugees. The Committee realizes this mandate principally through the monitoring and analysis of Canadian government and international policy developments with respect to refugees.

2. The focus of our brief and comments on Canada's compliance with the CRC will be in terms of what we consider most relevant to the problems faced by children (whether citizen or non-citizen) of refugee families, as reported to us by church groups who work directly with them.

3. In October 1993, Canadians elected a new government, one whose stated policy platform with respect to refugees was decidedly open to the plight of refugees and their families. Since the election, the Minister of Immigration has commissioned two independent reports on key aspects of Canada's refugee policy and practice. As well, the government has undertaken a wide-ranging consultation among the general public with the purpose of formulating a ten year strategic immigration framework. These consultations and reports have all revealed significant problems in Canada's immigration policy and practice, problems that affect refugees and their families. In submitting this brief to the Committee on the Rights of the Child, it is our position that it is well situated to encourage needed initiatives relating to children of non-citizens in Canada.

4. In what follows, we intend to begin with a general overview of the situation of refugee claimants, refugees and their families, and other non-citizens in Canada. We shall then review Canada's compliance with the CRC, following the main headings of the Canadian government's submission to the Committee.

I. GENERAL OVERVIEW OF THE SITUATION OF REFUGEES AND NON-CITIZENS IN CANADA

5. In a typical year between 1990 and 1994, 25,000 to 35,000 asylum seekers arrived to make claims for refugees status. In that same period, some 6,000 to 8,000 persons were expelled. As well, some 200,000 persons were granted with permanent resident status each year to settle in Canada. They will reside with this status at least three years, after which they can apply for citizenship. In addition, a number of persons arrived with 6-month renewable visitor visas and were given work permits, for example, several thousands of such persons arrived from the former Yugoslavia. Among them are children.

Brief to Committee on Rights of the Child.

6. There are also large numbers of travellers who enter Canada. In 1988/1989 some 40 million US residents and 4 million residents of other countries visited Canada.

7. The *Immigration Act* also governs the rights of non-citizens under a variety of circumstances, including:

- those seeking entry to Canada from overseas;
- those seeking entry to Canada at border points;
- those present in Canada;
- those in expulsion proceedings, up to and including arrival in the territory of another state.

Their access to the right to work, health care, social security, family life is linked to the particular status accorded to them under the *Immigration Act*. Most statuses can be assigned at the discretion of an Immigration official at the time of entry. Convention Refugee status can only be assigned by the Immigration and Refugee Board (IRB), which is a quasi-judicial institution established by an act of Parliament.

8. The statuses referred to in the *Act* include permanent resident, visitor, student, convention refugee, refugee claimant. In theory, the *Immigration Act* regards a person having permanent resident status unless some other status is designated. In practice, numbers of people reside in Canada with unclear status and correspondingly ambiguous access to rights, such as work or health care. They include refused refugee claimants and other persons in petitioning and legal

proceedings against deportation, persons whom the government chooses not to deport as a group, such as Haitians or persons the government chooses not to deport as individuals.

II. GENERAL MEASURES OF IMPLEMENTATION

A. Implementation by States, Article 4: Constitution and Canadian Law

9. Neither the *Constitution Act* nor the *Immigration Act* import most of the explicit rights or obligations from the Convention on the Rights of the Child. In general, despite Canadian Charter of Rights and Freedoms sections 7, 12 and 15 (1) Sections the current state of Canadian Law does not provide for all non-citizens, including children, a fair consideration of the impact on family life or on the future development of a child of decisions in their regard.

Brief to Committee on Rights of the Child

7, 12 and 15 refer to the following rights:

7: "Everyone has the right to life, liberty and security of the person and the right not be deprived thereof except in accordance with the principles of fundamental justice."

12: "Everyone has the right not to be subjected to any cruel and unusual treatment or punishment."

15 (1): "Every individual is equal before and under the law and has the right to the equal protection and benefit of the law without discriminating and, in particular, without discrimination based on race, national or ethnic origin, colour, religion, sex, age or mental or physical disability."

10. Recent Canadian federal court decisions with respect to removal orders have further restricted the access of non-citizens to the protection of the Canadian Charter of Rights and Freedoms. The Federal Court of Appeal in *Denis v. M.E.I* 1976 1 F.C. 699 (F.C.A.) determined that the Canadian charter of right of liberty and security of the person (Section 7) was not engaged by the removal of a non-citizen mother with a young Canadian citizen child. The Court also ruled that removal of the mother was not cruel or unusual punishment (Section 12).

11. In another decision, the Federal Court (Trial Division) rules that liberty and security of the person rights (Section 7) were not engaged in the removal of a single non-citizen parent of a Canadian child (*Downes v. M.E.I.*(1986) 4 F.T.R. 215). In its *Suresh Seelochan* judgement, the Federal Court dismissed an application for review of an administrative decision concerning a non-citizen from Trinidad, his wife and two sons, who asked to be allowed to remain in Canada for humanitarian and compassionate reasons. No reasons for the negative decision were given, despite the fact that the boys attend school in Canada and the family has no home or assets in Trinidad. If sent back it is highly unlikely the father will find work there. (The judgement of the Federal Court T-3027-91. August 1994, is attached to illustrate the extent of the difficulties. The decision finds that the Constitution is not at issue when parents are removed, apparently because they choose to take minor children with them.)

12. In 1989, the Canadian Council of Churches (CCC) took court action alleging sections of the *Immigration Act* were in contravention of the Canadian Charter of Rights and Freedoms, notably sections 7 and 15 of the Charter. In 1992, the Supreme Court of Canada rejected the case on the technical matter of standing. The court admitted "some aspects of the statement of claim could be said to raise a serious issue as to the validity of the legislation." However, the court

noted that "refugee claimants can and have frequently appealed administrative decisions under the statute."

13. In July 1992, the CCC took its case before the Inter-American Commission on Human Rights arguing that there was no simple effective court remedy in all the circumstances when fundamental rights of non-citizens were at issue. In late 1992, individual cases were submitted to the Inter-American Commission to support the CCC Case. In one case, the government claimed that judicial review was available in the Federal Court. The case was lost on admissibility.

14. In the spring of 1994, the Supreme Court of Canada (in Reza) clarified that persons governed under the *Immigration Act* do not have guaranteed access to Provincial Courts, the court which has been held traditionally to have plenary jurisdiction overall on constitutional rights such as *habeas corpus* or non-discrimination.

15. In some cases, supplemental evidence was submitted to the Inter-American Commission on Human Rights to the effect that the domestic remedy was inadequate, at least in the circumstances of the cases. The evidence included a study of the Federal Court of Appeal whose findings showed that the rate of granting leave to nationals from five countries varied between 0% and 69% among the different judges. Special submissions were also made on the matters of whether it was necessary to exhaust all remedies including theoretical ones.

Brief to Committee on Rights of the Child

16. Even though fundamental constitutional rights are at issue, access to the Federal Court is by leave, which is restrictive in its application. This is probably why almost all the testimony from non-governmental and expert sources protested the judicial review and appeal provisions of Bill C-55, which led to revisions to the *Immigration Act* taking effect in 1989, and of Bill C-86, which led to more restrictive revisions taking effect in 1993. The testimony is on public record.

17. In determining whether or not adequate guarantees against violations of the *Convention* on the Rights of the Child are established in Canadian law, we caution against reliance on the Canadian Charter of Rights and Freedoms (Section 15) and government affirmation supported by reference to occasional remarks in decisions of the Supreme Court of Canada. It is important to determine whether a guarantee is firmly established in Canadian law and its practice.

18. Beyond the formal legal remedies, the federal and provincial human rights commissions could do more to promote international human rights including the provisions of the *Convention* on the Rights of the Child. The problem here is one of traditional domestic perspective, large case loads, limited resources and, to some extent, a need to restructure.

RECOMMENDATION: (1) We encourage members of the Committee on Child to seek further advice on the matter of a simple effective remedy to uphold fundamental constitutional rights, such as protection against racial discrimination, by consulting with the Inter-American Commission on Human Rights on the evidence on remedies for particular cases submitted by the Canadian Council of Churches.

(2) The government has recently released a ten year strategic framework for immigration and refugee policy. As part of that framework there are plans for amendments to the *Immigration Act* and the creation of a *Citizenship Act*. We urge the Committee to

ask the Canadian government what plans it has for incorporating the protections of the CRC into these two pieces of legislation and their implementing regulations.

B. Dissemination of the Convention: Article 42

19. There have been no formal training programs for immigration officials of the Immigration and Refugee Board, Federal Court judges and immigration lawyers on the implications of the CRC for non-citizens. Nor has there been a formal effort to ensure that the application of the Convention to non-citizens is part of the immigration law programs of law schools.

RECOMMENDATION: (3) We recommend that formal training programs be developed by

an independent and impartial body for immigration officials, members and officials of the Immigration and Refugee Board, Federal Court judges, law society continuing education programs and law schools on the application of the specific provisions of the Convention to non-citizens.

Brief to Committee on Rights of the Child

C. Dissemination of Reports: Article 44

20. Since 1990, the Canadian Council of Churches, with the Inter-Church Committee for Refugees, has submitted briefs to every UN treaty body which has examined Canada on matters relating to non-citizens and the *Immigration Act*. Neither the Canadian Council of Churches nor our Committee was sent a copy of Canada's initial report, which makes several references to the *Immigration Act*.

RECOMMENDATION: (4) We ask the Committee to urge the Canadian government to

assume responsibility for ensuring that its report is disseminated to all agencies expected to have an interest in Canada's compliance with the CRC, including the Canadian Council of Churches, and the Inter-Church Committee for Refugees.

III. GENERAL PRINCIPLES

A. Non-Discrimination: Article 2

21. In general, neither the Charter of Rights and Freedoms, nor Canadian legislation, nor legislative regulations allow for protection irrespective of legal status, as provided for under Article 2 of the CRC. There have been cases of non-citizen children facing deportation to situations of civil war, instability, or where there is lack of medical services adequate to their conditions.

22. As well, Canadian legislation allows for the deportation of one or both parents of a child, even where the children are Canadian citizens and have a right to remain in Canada. Officials of the Department of Immigration have taken the view that the children may remain in Canada, but their parents must leave.

23. As the government states in its report (#53), the *Canadian Human Rights Act* can in theory protect a child. However, non-citizen children are treated like non-citizens, which means they do not have access as of right to the protection of the Act.

24. Moreover, under the *Immigration Act* it is customary to treat children of non-citizens as wards of their parents. Non-citizens only have access to the Canadian Human Rights Commission if the Minister considers them to be legally in Canada. The Minister has used his discretion to authorize the Commission to look at non-citizen cases. However, the general practice has been for immigration officials to presume that only non-citizens with permanent resident status qualify as lawfully in Canada.

RECOMMENDATIONS: (5) We recommend that the *Canadian Human Rights Act* be

amended to allow non-citizen children to be amended to allow non-citizen children to benefit from work of the Commission as of right.

Brief to Committee on Rights of the Child

(6) We recommend that the *Immigration Act* be amended to extend the protections of the CRC to all children without discrimination, particularly with respect to legal status.

B. Best Interests of the Child: Article 3

25. Article 3 is not given explicit expression in the *Immigration Act* or regulators, nor in its implementation. Nor do the protections of this Article appear in Federal Court decisions influencing the implementation of the *Act*. We are pleased to note that the government, in paragraph 69 of its report to the Committee, foresees further measures.

26. As mentioned above, however, we also have noted practices on the part of Immigration officials that clearly run contrary to the best interests of the child. In particular, we are very disturbed by the unwillingness of the Department to take into account the social, medical, developmental needs of children when considering applications not to execute deportation orders against their parents. Immigration officials refuse to acknowledge the relevance of the protections of the CRC when considering these applications.

27. As well, Canada's process for reuniting refugees with their families is very slow, sometimes taking up to two years. For a number of years now, the Canadian churches have been pressing the government to allow family members of refugees to come to Canada and to process their application for family reunification from within Canada. To date, the government has refused to do this. More recently, the government erected a further barrier to family reunification and ensuring that the best interests of the child are respected by requiring a \$500 permanent resident's fee for each family member. This is creating hardship for refugees and their families, who cannot afford amounts that in many cases run to several thousand dollars.

RECOMMENDATIONS: (7) We recommend that the CRC be named in section 3 (g) of

Immigration Act, that Article 3 of the CRC be explicitly added to the stated "purposes" of the Act (Section 3), and that Article 3 be repeated in relevant sections of the Regulations.

(8) We recommend that the Committee urge the Canadian government to amend the *Immigration Act* to permit the immediate reunification of family members with an accepted refugee claimant and the processing of the entire family for permanent residence from within Canada.

(9) We recommend that the Committee urge the Canadian government to reverse its decision to charge refugees and their family members a fee for being processed for permanent residence in Canada.

Brief to Committee on Rights of the Child

C. The right to life, survival and development Article 6

28. The government's report addressing this right fails to examine Canada's policies and practices in the area of the expulsion of non-citizens. We have already noted above our serious concerns in this area, and we reiterate our call for explicit provisions within the *Immigration Act* which will ensure that the particular needs of children (whether they are citizens or not) whose parents are facing expulsion from Canada are taken into account before such an expulsion is executed.

29. Furthermore, Article 6 provisions need to inform Immigration Regulations on overseas selection of refugee families for protection by resettlement in Canada. Specifically, the regulation should favour family selection when there is a child who stands to gain significant protection and benefit.

RECOMMENDATION: (10) We recommend that Article 6 of the CRC explicitly added to

the *Immigration Act* expulsion protection, in particular section 53, and to Immigration Regulations governing overseas selection of refugees for resettlement.

C. Respect for Views of the Child: Article 12

30. Notwithstanding the government's claim in paragraph 78 of its report, the *Immigration Act* does not require the Immigration and Refugee Board (IRB) to provide an opportunity to consider the views of a child in a refugee status hearing or an expulsion hearing.

31. Earlier this year, members of the Inter-Church Committee for Refugees (ICCR) questioned officials of the IRB in Toronto concerning whether members of the Board were aware of the *Convention* on the Rights of the Child and of the need to consider the child's perspective. The officials were not aware of the content of the *Convention* and stated that members of the IRB only go as far as the Act and Federal Court prescribe. The fact that a child will also be affected by a refugee status decision concerning a parent is not considered.

32. Similarly, an official issuing a deportation order against a parent has no direction to consider also the views of a child or the effect on a child of the order. In practice, a child is deported as a consequence of a decision against a parent, in accordance with the government paragraph where the parent is presumed to be a guardian acting on behalf of the child. There is no allowance made for considering the views of a child when examining an application for humanitarian and compassionate consideration for the purpose of staying the execution of the expulsion order.

33. Currently, the government is considering different policy options with respect to an appeal for refugee claimants as well as revising the humanitarian and compassionate review process.

To date, in discussions with officials on these two points little consideration has been given to developing mechanisms that will assure that the views of children are taken into account.

RECOMMENDATIONS: (11) We recommend that the *Immigration Act* and Regulations

ensure that in interviews, examinations, inquiries and hearings the views of the child as an individual be considered in accordance with article 12.

(12) We recommend that the Committee ask Canadian officials what mechanisms the government is looking at for assuring that the views of children will be taken into account during the appeal of a negative refugee decision and the consideration of a humanitarian and compassionate application.

IV. CIVIL RIGHTS AND FREEDOMS

A. Protection from Torture and Cruel Treatment Article 27 (a)

34. For non-citizens, the remedies for civil rights are not securely guaranteed in the *Immigration Act* and remedies are restrictive in practice. This is also for non-citizen children. Moreover, the protection under the *Convention* against Torture (Article 3), which prohibits return to a country where there are reasonable grounds to believe the person may be tortured is not in the Constitution or the *Immigration Act*.

35. Similarly, the Constitutional guarantee of protection from cruel and inhuman or degrading treatment is not explicitly imported into the *Immigration Act* and the courts have been cautious in the limited case law. Lawyers questioned did not consider legal avenues feasible for persons in discretionary immigration status change or expulsion procedures.

RECOMMENDATION: (13) We recommend that the protection from torture or cruel or

degrading treatment be explicitly introduced into the *Immigration Act*, in section 3, which outlines the purposes of the *Act*, and in section 53, which details protections surrounding expulsion.

V. FAMILY ENVIRONMENT AND ALTERNATIVE CARE

36. In its examination of Canada in 1990, a member of the UN Human Rights Committee observed that articles 17, 23 and 24 of the Covenant on Civil and Political Rights (which deal with family rights) are not explicitly in the Constitution nor the *Immigration Act*. In its replies to questioning before the UN Committee on Economic, Social and Cultural Rights in May 1993, Canada held it was sufficient that the Supreme Court of Canada has indicated that Canadian Charter of Rights and Freedoms sections 7 and 15 could be interpreted to include family rights. However, as the Canadian churches argued in their July 1994 Report to the UN CERD, this possibility of family protection is far from established in Canadian law and practice. Indeed most decisions relating to non-citizens in expulsion undermine the integrity of the families concerned.

Brief to Committee on Rights of the Child

37. For example, the Canadian churches report to the CERD recounted the story of a single parent who was expelled while her Canadian-born children were made wards of the state in Canada. In another case, a single parent and her children were expelled from Canada, resulting in separation of the children from their grandmother and almost all aunts and uncles in Canada. Family issues were evidently not taken seriously.

A. Parental Guidance: Article 5

38. As we have mentioned a number of times in this Brief, family considerations play little role in the practice of Immigration officials, particularly when it is a question of expulsion or family reunification. Thus, Article 5 of the CRC is not part of the Immigration Regulations for the eligibility of family class immigration of grandparents or other close relatives, when it is shown that there is a critical relationship with a child in Canada.

RECOMMENDATION: (14) We recommend that the Immigration Regulations be amended

to simplify and accelerate the procedures for family class and associated relatives when there are reasonable grounds to believe that there is a relationship critical to the development of a child in Canada.

B. Separation from Parents and Family Reunions: Articles 9 and 10

39. We would like to add to the government report, which is accurate as far as it goes. The *Immigration Act* does not allow family reunion unless the person in Canada who is sponsoring is 19 year or older and has permanent resident status. During the preparation of this report, church groups reported instances where mothers in Canada under 19 years of age have been in fact prevented from "sponsoring" their children. Young mothers are separated from their babies or young children who are Canadian citizens and are entitled to remain in Canada, cannot "sponsor" their non-citizen parents who are subject to expulsion from Canada.

40. With respect to the issue of expulsion, as described in the government's report (#152), Canadian citizen children born to non-citizen parents are expelled with their parents even when this is to a situation that is evidently not in the best interests of the citizen child and his/her development. We recognize the concern of a government to be able to deport non-citizens who are not formal refugees. However, to return a Canadian child to the parents' home country, which is suffering from civil conflict, poverty, or inadequate health and education services raises, as we have already noted above, a concerns with respect to Canada's compliance with Article 3 of the CRC.

41. With respect to separation and family reunion, in practice, the spouse and child of a person in immigration procedures in Canada will not be granted a tourist visa. The person is thereby prevented indefinitely from visiting a parent or spouse in Canada.

Brief to Committee on Rights of the Child

42. Persons determined to be *Convention* refugees in Canada cannot have a spouse, usually a wife, and children join them unless they pass through further immigration administrative procedures and obtain permanent resident status. These procedures require in practice a further one to three years. This delay imposes hardship on a spouse and child overseas, often in a dangerous or precarious situation. Under the Vienna Concluding Document of the so called Helsinki Accords, Canada accepted in principle to simplify procedures and reduce administrative requirements for family meetings and family reunion, to reduce delays to a maximum of six months and norm of three months. Canada reaffirmed this commitment in the Document of the Copenhagen meeting on the Human Dimension.

43. The immigration procedure to permanent resident status is discretionary and

can be stressful. Moreover, there is a very short time frame within which a recognized refugee must apply for permanent residence, or run the risk of further administrative delays. As we have already noted, the government recently instituted a \$500 per family member processing fee. Those who have just received refugee status are put in the position of having to find a significant sum of money to sponsor their families. As well, in the Document of the Copenhagen meeting on the Human Dimension, Canada agreed to reduce visa fees to the lowest possible level (Doc para 19).

44. We are also concerned about other persons in various immigration procedures and who are separated from their families. Some persons in procedures appealing a deportation can be without a decision for one to three years. And there are still other persons who are determined not to be refugees, but who are from countries to which Canada decides temporarily not to deport. This can go on for several years, during which time the people concerned cannot bring their family members to Canada.

45. From the point of view of a small child overseas, a year is a long time to be unable to visit a parent. Thus, these immigration delays appear to run counter to *Convention* articles 9 and 10. These articles should inform visa procedures so that do not impede the travel of a child with the other parent in Canada.

RECOMMENDATION: (15) We recommend that the *Immigration Act* be amended to

explicitly cite *Convention* articles 9 and 10 and that and Immigration Regulations be amended to facilitate, by measures such as issuing tourist visas on demand, visits by a child overseas to a parent in Canada after no more than six months in Immigration procedures.

VI. BASIC HEALTH AND WELFARE

A. Survival and Development Article 6(2)

46. Under article 6(1) above, we have raised the concern about the child facing expulsion with non-citizen parents. There have been instances when the health care of the child in the country of destination was at issue. This is, of course, at least threatening to development and it can be life-threatening.

47. For those in Canada, there have been difficulties in getting access to health care services for children in some non-citizen families where the status of a parent was being determined. At one point, this included even Canadian citizen children in some non-citizen families. However, in Ontario, during 1994, child citizens born to non-citizen parents got their own access to health care. It is not clear if this occurs across Canada. In general, access to health care hinges on whether non-citizen parents are deemed to be "residing" in a Province or not. For non-citizen families in immigration expulsion or status change procedures there can be gaps and problems for both parents and children.

RECOMMENDATION: (16) We recommend that the *Immigration Act* be amended so as to

recognize persons in procedures governed by the *Immigration Act* to be legally in Canada and to be considered resident for the purpose of receiving health care.

B. Disabled children: Article 23

48. *The Immigration Act* and Regulations currently do not select families with a

disabled member, including a child, for resettlement for protection in Canada. The so-called admissibility criteria (likelihood of successful establishment in Canada, and passing medical security tests) prohibit such settlement. There have been agonizing situations where a whole family has been barred from resettlement in Canada on grounds of a disabled family member. Several national churches have offered to assist in resettlement of such refugee families as a priority and under joint agreement with federal and provincial authorities.

49. Article 23 would appear to favour overseas selection for protection by resettlement in Canada of a refugee family with a disabled child who would particularly benefit from a Canadian environment. Moreover, this is one of the tests - medical need - that the UNHCR applies in determining who requires protection through resettlement to a third country.

C. Health: Article 24

50. Article 24 would appear to bar expulsion of a child depends on accessibility to treatment, care and equipment available in Canada and not readily so in the country of destination. Such deportations are not currently precluded by law or regulation, and they do occur.

VIII. SPECIAL PROTECTION MEASURES

A. Children in Situations of Emergency: Article 22, 38

51. The issue of deportation has been a concern of the Inter-Church Committee for Refugees for some time. Specifically, church members continue to be deeply troubled by the lack of a meaningful appeal within the Canadian system. This has resulted in the wrongful deportation of genuine refugees whose stories have not been properly heard and adjudicated, including children refugee claimants.

52. For non-citizen children at risk, as well as for non-citizens in general, the general problems with current discretionary administrative procedures intended to protect from inappropriate expulsion have recently been documented. In a report by two independent investigators called "The Quality of Mercy", requested by the Minister of Citizenship and Immigration and released in March 1994, the inadequacies of current "Post Claim Review" and "Humanitarian and Compassionate Review" procedures were documented.

53. The report proposes clear new criteria for these procedures, which are based on human rights obligations and decisions made by independent decision-makers. These would offer protection from inappropriate expulsion for refugee children and children from conflicts. The proposals in this report have received the support of the Canadian churches. Specifically, the churches in Canada have repeatedly called on the Canadian government to implement safeguards around deportations that embrace the following principles:

- a. That establishment of an independent body to hear reasons why a refugee claimant or other non-national not be deported, and that this body be comprised of competent persons to make such a determination;
- b. That the criteria for review shall not impose a higher test than the refugee determination process itself;
- c. That the criteria for review include compassionate considerations such as: medical needs; family ties; special considerations where children are involved in any way or where women have likely been affected by forms of degrading treatment in the home country.

d. That the criteria for review include humanitarian considerations such as: whether the person is stateless or not; the amount of time the person has been in the country seeking to deport them; a worsening of conditions in the home country of the person facing deportation; situation of generalized violence and human rights abuse.

e. Persons shall be given a reasonable opportunity to choose the country to which they will be deported;

f. That persons not be deported, either directly or indirectly, to a country where they may be subject to cruel, inhuman or degrading treatment.

g. That persons being deported not be turned over to officials of the receiving country.

54. By establishing safeguards in any expulsions procedure that reflect the above principles, the churches are confident that the genuine protections needs of non-citizens, including those of children, would be met.

RECOMMENDATION: (17) We recommend that the government be encouraged to

implement the proposals in the report, "The Quality of Mercy", which would provide independent decision makers and clear human rights criteria to protect non-citizen children, including refugee children and children from conflicts, from inappropriate expulsion.

B. Refugees: Article 22

55. Notwithstanding the government's claim in paragraph 307 of its report, as noted earlier in this Brief, the Immigration Act makes no explicit provision for ensuring that an accompanied child, who might be a refugee, be examined by the IRB in his or her own right. Nor does the Act require that the situation of a child be taken into account in expulsion proceedings of a non-citizen parent.

56. In theory there is a legal remedy of judicial review by leave to the Federal Court to uphold the rights of non-citizens. This would include protection against violations of rights under the Convention on the Rights of the Child. In practice, the effectiveness of this remedy is not guaranteed in all the circumstances of a person's case. As the Canadian Human Rights Commission says in its 1993 Report at page 15:

"There is no denying that the high hopes engendered by the Charter of Rights and Freedoms have dwindled somewhat in recent years. We can only report with regret that repeated statements from parliamentary committees, from this Commission and from other human rights watchdogs have failed to galvanize the Federal Government into broadening human rights criteria or reinforcing the rules of compliance. The overall effect of inaction and delays has been to marginalize the struggle against discrimination and inequality."

57. The lack of a predictable and secure remedy in law, even when obligations are unambiguously set out, creates an atmosphere of anxiety. ICCR reported one particular manifestation of this in an October 1990 report to the UN Human Rights Committee, "Human Rights and the Refugee Claimant Backlog". The resulting lack of security of the person is an experience common to various categories of non-citizens facing different immigration procedures, such as expulsion or detention or the granting of permanent resident status.

CONCLUSION

58. Given the arbitrary nature of some administrative remedies, such as the Humanitarian and Compassionate Review, and lengthy delays extending into years, the predicament of non-citizens, including and especially refugees, is similar to the situation considered by the European Court of Human Rights in the Malone Case. The effect on children of persons caught up in such immigration procedures, whether they are in Canada sharing the stress in a family with the parent or whether they are separated from at least one parent and overseas, is even more serious.

59. The consequence for the CRC of the general weakness in remedies is not that there are continuing clear violations. Rather, it is a constant uncertainty about any consideration of the child's perspective in a variety of procedures under the Immigration Act.

60. In those sections of the Canadian government's report that we have referenced, we find the report to be accurate so far as it goes, with any inaccuracy being an omission. In many of these areas, the government is aware of difficulties and has been in consultations with a variety of non-governmental agencies and individuals to develop policy alternatives. It is therefore most timely to offer encouragement for any reforms the Committee on the Rights of the Child may deem most necessary.

61. We recognize that the number of the issues which we raise from the experience of Canadian church groups pose dilemmas for governments other than Canada. They are international issues. Non-citizen children, and other non-citizens, would stand to benefit from suggestions by treaty bodies.

RECOMMENDATION: (18) We urge the Committee on the Rights of the Child to issue a

general comment which further clarifies the application of Articles 5, 6, 9, 10, 12, 22, 23, 24 to immigration situations involving non-citizens and their children.

EXECUTIVE SUMMARY: RECOMMENDATIONS

We recommend that:

(1) The members of the Committee on the Rights of the Child seek further advice on the matter of a simple effective remedy to uphold fundamental constitutional rights, such as protection against racial discrimination, by consulting with the Inter-American Commission on Human Rights on the evidence on remedies for particular cases submitted by the Canadian Council of Churches.

(2) The Committee ask the Canadian government what plans it has for incorporating the protections of the CRC into proposed amendments of the Immigration Act and the forthcoming new Citizenship Act, as well as their implementing regulations.

(3) Formal training programs be developed by an independent and impartial body for immigration officials, members and officials of the Immigration and Refugee Board, Federal Court judges, law society continuing education programs and law schools on the application of the specific applications of the Convention to non-

citizens.

(4) The Canadian Human Rights Act be amended to allow non-citizen children to benefit from the work of the Commission as of right.

(5) The Immigration Act be amended to extend the protections of the CRC to all children with discrimination, particularly with respect to legal status.

(6) The CRC be named in section 3(g) of Immigration Act, that Article 3 of the CRC be explicitly added to the stated "purposes" of the Act (Section 3), and that Article 3 be repeated in relevant sections of the Regulations.

(7) The Committee urge the Canadian government to amend the Immigration Act to permit the immediate reunification of family members with an accepted refugee claimant and the processing of the entire family for permanent residence from within Canada.

(8) The Committee urge the Canadian government to reverse its decision to charge refugees and their family members a fee for being processed for permanent residence in Canada.

(9) Article 6 of the CRC be explicitly added to the Immigration Act expulsion protection, in particular section 53, and to Immigration Regulations governing overseas selection of refugees for resettlement.

(10) The Immigration Act and Regulations ensure that in interviews, examinations, inquiries, and hearings the views of the child as an individual be considered in accordance with article 12.

(11) The Committee ask Canadian officials what mechanisms the government is looking at for assuring that the views of children will be taken into account during the appeal of a negative refugee decision and the consideration of a humanitarian and compassionate application.

(12) The protection from torture or cruel or degrading treatment be explicitly introduced into the Immigration Act, in Section 3, which outlines the purposes of the Act, and in section 53, which details protections surrounding expulsion.

(13) The Immigration Regulations be amended to simplify and accelerate the procedures for family class and associated relatives when there are reasonable grounds to believe that there is a relationship critical to the development of a child in Canada.

(14) The Immigration Act be amended to explicitly cite Convention article 9 and 10 and that Immigration Regulations be amended to facilitate, by measures such as issuing of tourist visas on demand, visits by a child overseas to a parent in Canada after no more than six months in Immigration procedures.

(15) The Immigration Act be amended so as to recognize persons in procedures governed by the Immigration Act to be legally in Canada and to be considered resident for the purposes of receiving health care.

(16) The government be encouraged to implement the proposals in the report, "The Quality of Mercy", which would provide independent decision makers and clear human rights criteria to protect non-citizen children, including refugee children and children from conflicts, from inappropriate expulsion.

(17) The Committee on the Rights of the Child issue a general comment which

further clarifies the application of Articles 5, 6, 9, 10, 12, 22, 23, 24 to immigration situations involving non-citizens and their children.

[Home](#)

The NGO Reports Database on Children's Rights includes all existing and public reports submitted to the Committee on the Convention of the Rights of the Child by NGOs and NGO Coalitions. The copyright of the reports are retained by the authors and use thereof must be duly acknowledged.

The database is the property of the Liaison Unit of the NGO Group for the Convention on the Rights of the Child and is managed by that unit. For further information or other enquiries please contact the Liaison Unit at dcj-ngo.group@pingnet.ch.
