



## **CHILDREN'S RIGHTS IN THE CONTEXT OF MIGRATION**

A UNICEF Canada Submission to the  
Department of Immigration, Refugees and Citizenship

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## **INTRODUCTION**

Immigrant and refugee children in Canada are among the most vulnerable members of our society. They require and are entitled to special consideration and protection measures. Canada's immigration and refugee policy should increase the consideration of the best interests and rights of these children in all areas of decision-making to ensure they are able to integrate successfully into Canadian society and to respect the rights to which they are entitled in the UN Convention on the Rights of the Child and other international human rights treaties. Young immigrants and refugees have much to offer Canada and it is Canada's duty to ensure their rights are protected.

## **ABOUT UNICEF CANADA**

As a UN agency, UNICEF is active in 190 countries and we have saved more children's lives than any other humanitarian organization. UNICEF Canada is a Canadian non-governmental organization (NGO) established 60 years ago and is the representative of UNICEF in Canada. We work tirelessly as part of the global UNICEF family to do whatever it takes to ensure that children and young people survive and thrive, and have every opportunity to reach their full potential. Our global reach, unparalleled influence with policymakers, and diverse partnerships make us an instrumental force in shaping a world where the rights of all children are realized.

UNICEF Canada builds awareness, raises funds, and mobilizes Canadians across the country to help save and protect the world's most vulnerable children. We promote public policy and practices in the best interests of children, informed by our global experience and international best practice, to contribute to the fulfillment of children's rights in Canada and around the world.

UNICEF is mandated by the United Nations General Assembly to advocate for the protection of children's rights, to help meet their basic needs and to expand their opportunities to reach their full potential. UNICEF is guided by the United Nations Convention on the Rights of the Child and strives to establish children's rights as enduring ethical principles and international standards of behaviour towards children.

UNICEF is entirely supported by voluntary donations and helps all children, regardless of race, religion or politics. The only organization named in the United Nations Convention on the Rights of the Child as a source of expertise for governments, UNICEF has exceptional access to those whose decisions impact children's survival and quality of life. We are the world's advocate for children and their rights. For more information about UNICEF, please visit [www.unicef.ca](http://www.unicef.ca).

## **OVERVIEW OF UNICEF CANADA'S POSITION**

UNICEF Canada welcomes the opportunity to participate in the public consultation on the government's immigration system. UNICEF Canada is advancing a child rights-based framework for Canada's immigration system affecting children (under age 18), in line with the United Nations Convention on the Rights of the Child, guidance provided by the United Nations Committee on the Rights of the Child, and other international human rights treaties. As a signatory to the Convention, the Government of Canada has accepted the obligation to legislate in a manner consistent with children's rights. Incorporating children's rights into immigration and refugee policy requires placing priority on the best interests of the child, giving children the right to be heard in all decisions affecting them, providing safe and developmentally appropriate alternatives to the detention of children and their caregivers, timely family reunification, the

reduction of statelessness, and ensuring accountability. By protecting and promoting children's rights, Canada will protect and support vulnerable children and demonstrate leadership in global migration, which will ultimately strengthen social and economic progress.

## **SUMMARY OF RECOMMENDATIONS**

**RECOMMENDATION #1:** That Canada amend its immigration and refugee legislation, policies and administrative regulations and guidelines so that the best interests of the child are explicitly stated as a primary consideration in all actions concerning the child or children and their parent(s) or caregiver(s).

**RECOMMENDATION #2:** That a Best Interests Determination process be applied by specialized personnel when decisions about the treatment of a child are necessary in any immigration or refugee context, including but not limited to situations of unaccompanied and/or separated children, detention, care or return of a child, family reunification, age determination, and citizenship and statelessness.

**RECOMMENDATION #3:** That Child Rights Impact Assessments be undertaken when considering legislative or policy proposals or other changes that may affect immigrant and refugee children, to ensure that the best interests of the child have been duly considered.

**RECOMMENDATION #4:** That the federal government amend its immigration and refugee legislation, regulations and policy so that opportunities for the child's views to be considered are fully and appropriately included in decision-making processes at all stages of the migration process where the child may be affected.

**RECOMMENDATION #5:** That the age provision in the refugee protection division rules stating that a person must be at least 18 years of age in order to submit an independent application for citizenship be repealed.

**RECOMMENDATION #6:** That Refugee Protection Division Rule 20 (2) granting automatic designated representative status to a parent or legal guardian of a minor be repealed.

**RECOMMENDATION #7:** That the federal government amend its legislation, regulations and related policies to explicitly prohibit the detention of children who are asylum-seeking, refugees and/or migrants solely on the basis of their or their parents' migration status.

**RECOMMENDATION #8:** That the federal government ensure that the detention of children who are asylum-seeking, refugees and/or migrants, where it occurs for reasons other than their or their parents' migrant status (for example, when a parent is detained on the basis of posing a danger to the public) is conducted in a manner consistent with the child's best interests and in compliance with article 37 of the CRC, which provides that such detention "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."

**RECOMMENDATION #9:** That the federal government repeal the *Protecting Canada's Immigration System Act* of June 2012, which gives the Minister of Immigration, Refugees and Citizenship the power to designate a group of persons as 'irregular arrivals' and to make decisions related to the detention of such persons, among other things.

**RECOMMENDATION #10:** That relevant legislation, policy and regulations be amended to provide that children separated from their parents or legal guardians due to migration-related causes are reunited within six months.

**RECOMMENDATION #11:** That fees associated with child migration-related applications be eliminated.

**RECOMMENDATION #12:** That there be a repeal of the requirement that individuals who are part of a group of designated 'irregular arrivals' and who have obtained refugee status must wait for a period of 5 years before; seeking sponsorship of their child/ren left behind in their home country or applying to travel abroad.

**RECOMMENDATION #13:** That section 117(9)(d) of the Immigration and Refugee Protection Regulations, which imposes inadmissibility on children whose parents did not disclose them on prior immigration applications, be amended or repealed.

**RECOMMENDATION #14:** That the federal government amend the *Citizenship Act* in order to restore the right to Canadian citizenship to all children of Canadian parent(s), including second generation children born abroad to foreign born Canadian citizens.

**RECOMMENDATION #15:** That where a parent(s) has lost his/her legal status in Canada as a result of leaving a sponsored relationship with a spouse or partner and a child is affected, his/her status be reconsidered, having regard to the best interests of the child.

**RECOMMENDATION #17:** That the federal government ensure that no child in Canada is without the full rights accorded by legal residency including education and health care.

**RECOMMENDATION #18:** That the federal government enact the position of a National Commissioner for Children and Youth so that the rights, interests and voices of children in Canada can be appropriately understood and safeguarded.

## **Children have the right to specific, priority consideration in all areas of policy and decision-making**

A child is a child, period. Their status, whether migrant or refugee, is immaterial to the realization of their rights as children under the Convention on the Rights of the Child.

The Convention on the Rights of the Child is a framework of interdependent rights which must be supported in all decision-making, policies and practices affecting children in the immigration and refugee context. These include the definition of a child as up to age 18 (art. 1), non-discrimination (art. 2), best interests as a priority (art. 3), the state's investment of maximum available resources (art. 4), optimal survival and development (art. 6), name and nationality (art. 7), identity and nationality (art. 8), family unification (art. 9, art. 10, art. 18), illegal transfer abroad (art. 11), decision-making (art. 12), protection from negligent treatment (art. 19), care of the state (art. 20), specific protection for refugee children (art. 22), review of placement (art. 25), protection from sale, trafficking, abduction and exploitation (art. 35, 36), and avoidance of deprivation of liberty (art. 37, 39).<sup>1</sup> All other Convention rights apply to these children, including rights to health care and education.

Article 22, expressly on the right to protection for refugee children, states,

States Parties shall take appropriate measures to ensure that a child who is seeking refugee status or who is considered a refugee in accordance with applicable international or domestic law and procedures shall, whether unaccompanied or accompanied by his or her parents or by any other person, receive appropriate protection and humanitarian assistance in the enjoyment of applicable rights set forth in the present Convention and in other international human rights or humanitarian instruments to which the said States are Parties.<sup>2</sup>

Aspects of Canada's immigration and refugee policy do not currently respect these rights to the extent they should. In the 2012 Concluding Observations on Canada's implementation of the Convention, the UN Committee on the Rights of the Child (the Committee) noted that Canada lacks a comprehensive national strategy or policy for migrant children.<sup>3</sup> The Committee asked Canada to address the disparities in access to services by vulnerable children, including immigrant children, and in so doing said that Canada should consider the Committee's General Comment No. 6 on the treatment of unaccompanied and separated children outside their country of origin.<sup>4</sup> The Committee recommended that Canada, 'bring its immigration and asylum laws into full conformity with the Convention and other relevant international standards'.<sup>5</sup>

## **Best Interests of the Child**

UNICEF Canada recommends that the Government of Canada amend the *Immigration and Refugee Protection Act (IRPA)* to explicitly provide that all decisions affecting a child must treat the best interests of the child as a primary consideration. This is one of the core principles guiding the implementation of all Convention rights, recognized in article 3:

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.<sup>6</sup>

In General Comment No. 14 on the right of the child to have his or her best interests taken as a primary consideration, the Committee advises that the words ‘shall be’ in article 3 “place a strong legal obligation on States” to ascribe to the best interests of the child “a larger weight”.<sup>7</sup> Rather than a discretionary consideration, it is an obligation of the state to ensure “that the child’s interests have high priority” and are not simply viewed as “just one of several considerations”.<sup>8</sup>

The best interests of the child principle has not been extensively applied in immigration and refugee policy; rather, its application has been limited to narrow areas of decision-making. The *IRPA* introduced a requirement for decision-makers to take the best interests of the child into consideration in particular contexts and that it is to be “construed and applied in a manner that [...] complies with international human rights instruments to which Canada is signatory.”<sup>9</sup> This includes the Convention on the Rights of the Child. Nonetheless there remain troubling gaps given the limited scope in law and the inconsistent application in practice.

The *IRPA* calls for the best interests of the child to be considered only in certain, specific contexts rather than in all decisions affecting children, as required by the Convention on the Rights of the Child. While the Convention states that children’s best interests must be a “primary consideration,” the Act only requires that they be “taken into account.” The federal government regularly argues in court that the best interests of the child should not be considered in situations other than those specified in the Act. Even where best interests are taken into account, decision-making is inconsistent due to variations in the interpretation and application by immigration officers. The evaluation of children’s best interests in Humanitarian and Compassionate applications is sometimes confused or incomplete, incorrectly weighed, or even completely absent (including in decisions at overseas visa offices).

For example, guidance that Immigration, Refugee and Citizenship staff receive, and posted on the Department’s website, does not clearly denote the ‘primary consideration’ that the best interests of the child merit. Instead, it states,

The codification of the principle of “best interests of a child” into the legislation **does not mean** that the interests of the child outweigh all other factors in a case. While factors affecting children should be given substantial weight, the best interests of a child is only one of many important factors that the decision maker needs to consider when making an H&C decision that directly affects a child.<sup>10</sup>

The UN Committee noted in paragraphs 34 and 35 of its 2012 Concluding Observations for Canada:

The Committee is concerned that the principle of the best interests of the child is not widely known, appropriately integrated and consistently applied in all legislative, administrative and judicial proceedings and in policies, programmes and projects relevant to and with an impact on children. In particular, the Committee is concerned that the best interest of the child is not appropriately applied in asylum-seeking, refugee and/or immigration detention situations.<sup>11</sup>

The Committee urges the State party to strengthen its efforts to ensure that the principle of the best interests of the child is appropriately integrated and consistently applied in all legislative, administrative and judicial proceedings as well as in all policies, programmes and projects relevant to and with an impact on children. In this regard, the State party is

encouraged to develop procedures and criteria to provide guidance for determining the best interests of the child in every area...<sup>12</sup>

The Committee recommended that ‘the federal government reform the IRPA to apply the best interests of children as a principle in all decisions and mechanisms for the treatment of children, and expand the grounds to take them into account in the treatment of parents with children’.<sup>13</sup> Recent court cases demonstrate how the Canadian immigration system is failing to fulfill its responsibilities to consider the best interests of the child when rendering decisions. In the 2015 case of *Kanthisamy v. Canada (Citizenship and Immigration)* the Supreme Court of Canada considered a decision rejecting a 16-year-old’s application for humanitarian and compassionate relief under s.25(1) of the *Immigration and Refugee Protection Act*.<sup>14</sup> The Supreme Court ultimately found that, “the [citizenship and immigration] Officer misconstrued the best interests of the child analysis, most crucially disregarding the guiding admonition that children cannot be said to be deserving of hardship”, ultimately setting aside the Officer’s initial decision and allowing the appeal to continue.<sup>15</sup>

In other instances, officials may make quick decisions regarding a young person without first considering their best interests, exposing them to potentially avoidable trauma. For example, in 2015 a 16-year-old Syrian boy arrived in Canada from the United States claiming refugee status.<sup>16</sup> He was detained by CBSA on arrival, and then held in detention and isolation for three weeks.<sup>17</sup> As an unaccompanied minor, his best interests – which includes the imperative of using detention on minors only as an absolute last resort and never on the basis of migration status alone - should have been considered when the decision to detain him was made.

In 2014, a 17-year-old boy was arrested at his former school in Montreal, and deported to Mexico a week later.<sup>18</sup> The boy is hearing impaired; had been living in Canada with his family since 2008; and was deported to Mexico alone, while his mother remained in Montreal.<sup>19</sup> The family reportedly had submitted an application to stay in Canada on humanitarian and compassionate grounds and were awaiting a decision on it when the boy was deported.<sup>20</sup>

**RECOMMENDATION #1:** That Canada amend its immigration and refugee legislation, policies and administrative regulations and guidelines so that the best interests of the child are explicitly stated as a primary consideration in all actions concerning the child or children and their parent(s) or caregiver(s).

A Best Interests Determination (BID) is a structured process that is undertaken to ensure that the best interests of a child are comprehensively considered during a decision-making process, on a case-by-case basis. The Committee on the Rights of the Child, in paragraph 74 of its 2012 Concluding Observations to Canada, recommends that a Best Interests Determination be used when dealing with unaccompanied and separated children outside their country of origin.<sup>21</sup> A Best Interests Determination (BID) should also be used as a tool to make decisions affecting a child in other immigration or refugee contexts. The Government of Canada should develop BID guidance drawing on the *UNHCR Guidelines on Determining the Best Interests of the Child*, which were developed in partnership with UNICEF.<sup>22</sup>

**RECOMMENDATION #2:** That a Best Interests Determination process be applied by specialized personnel when decisions about the treatment of a child are necessary in any immigration or refugee context, including but not limited to situations of unaccompanied and/or separated children,; detention, care or return of a child, family reunification, age determination, and citizenship and statelessness.

A structured Child Rights Impact Assessment (CRIA) process should be used in the development of all immigration and refugee legislation and policy that may affect children as a group. Child Rights Impact Assessment (CRIA) is a means of considering the potential impacts of a proposed law, policy or other decision on children in order to maximize benefits equitably, avoid and alleviate adverse impacts, and uniformly and coherently incorporate the best interests of children.

The Committee on the Rights of the Child outlines the role of CRIA in General Comment No. 14, paragraph 35:

With regard to implementation measures, ensuring that the best interests of the child are a primary consideration in legislation and policy development and delivery at all levels of Government demands a continuous process of child rights impact assessment (CRIA) to predict the impact of any proposed law, policy or budgetary allocation on children and the enjoyment of their rights, and child rights impact evaluation to evaluate the actual impact of implementation.<sup>23</sup>

**RECOMMENDATION #3:** That Child Rights Impact Assessments be undertaken when considering legislative or policy proposals or other changes that may affect immigrant and refugee children to ensure that the best interests of the child have been duly considered.

### **The Right to be Heard**

Children and youth have the right to express their views in decisions that affect them. This is provided for in article 12 of the Convention without limitation in respect to age or the nature of the decision.<sup>24</sup> Therefore, the Government of Canada should seek to enable a child to provide his/her views and to otherwise participate in decision-making and be given due weight according to the child's age and maturity. The Committee on the Rights of the Child, in paragraph 54 of its General Comment No. 14 on the right of the child to have his or her best interests taken as a primary consideration, has advised that a child in a vulnerable situation should not be deprived of this right.<sup>25</sup> Specific measures, accommodation and supports must be put in place to ensure that the child is able to express an opinion and participate in the assessment of best interests. This also supports more informed and effective decision-making.

As migrant children are unlikely to know of or understand their right to be heard, communicating this and facilitating their meaningful participation should be an important part of an immigration and refugee process. Children should be informed about the decision-making process which they will be subject to, provided with information about possible solutions and services they are entitled to, and be supported to express their views on these issues, whether directly themselves or through a representative. Should they wish to express themselves through a representative, there must be a process in place allowing them to have input into the selection of a representative.

Canada's immigration and refugee policy does not sufficiently provide for children's right to be heard. For example, children's ability to apply for citizenship independently of an adult is curtailed by an age provision and the refugee protection division rules automatically grant designated representative status to a parent or guardian without first consulting the child whose application is at stake.<sup>26</sup> To remedy these specific shortcomings, UNICEF Canada recommends that the age provision requiring an individual to be at least 18 years of age in order to submit an application for citizenship be repealed and that refugee protection division rule 20 (2) be



repealed.<sup>27</sup> Similarly, the relevant legislation, policies, regulations and guidelines should be reviewed using a Child Rights Impact Assessment to ensure children can participate in other decision-making situations, including through the removal of arbitrary age barriers.

**RECOMMENDATION #4:** That the federal government amend its immigration and refugee legislation, regulations and policy so that opportunities for the child's views to be considered are fully and appropriately included in decision-making processes at all stages of the migration process where the child may be affected.

**RECOMMENDATION #5:** That the age provision in the refugee protection division rules stating that a person must be at least 18 years of age in order to submit an independent application for citizenship be repealed.

**RECOMMENDATION #6:** that Refugee Protection Division Rule 20 (2) granting automatic designated representative status to a parent or legal guardian of a minor be repealed.

### **Non-Detention of Children**

UNICEF Canada calls for the end of the detention of children solely on the basis of their or their parents' migration status, as detention for that sole purpose is never in the best interests of the child. Migrant children are particularly vulnerable to physical and psychological violence in places of detention. Appropriate, non-custodial and community-based alternatives for children and their families are proven to be effective alternatives to detention.

There is considerable ambiguity in the reasons for which children in Canada are detained. Canada Border Services Agency (CBSA) procedures state:

“Where safety or security is not an issue, the detention of minor children is to be avoided whether unaccompanied or accompanied by a parent or legal guardian. For unaccompanied minors, the preferred option is to release them with conditions to the care of child welfare agencies, if those organizations are able to provide an adequate guarantee that the minor child will report to the immigration authorities as requested. If the presence of smugglers or traffickers is a concern, the matter must be discussed with the child protection officers to ensure that adequate protection is provided and that the risk of flight in these situations is mitigated.”<sup>28</sup>

According to information from the Immigration and Refugee Board, at least 82 children were detained in Canada in 2015 for an average period of 23 days.<sup>29</sup> This is more than would be expected if the application of detention were only used as a measure of last resort. Furthermore this does not include children who were not officially detained but rather de facto detained with a parent.

Research into migrant detention in Canada has found that it is an acutely stressful and potentially traumatic experience for children.<sup>30</sup> Extreme distress, fear, and a deterioration of functioning were among the documented consequences experienced by detained children.<sup>31</sup> However, separating children from their primary attachment figure was also documented as a source of extreme distress for both children and their parents, suggesting that separating children from their detained parents may not be in their best interests.<sup>32</sup> This suggests that children's psychological health as well as their right to not be separated from their parents must both be prioritized in the consideration of their best interests.<sup>33</sup> However, arguments based on

the best interests of children in the review of the detention of their parents are routinely dismissed in such cases, because the law does not list the best interests of the child among the factors to be considered.

Canada reviews all detentions at 48 hours, 7 days and every 30 days thereafter. Once detained, immigration officials do not always give priority to resolving the cases of detained children. Without a child-specific detention review policy, some children will remain in detention for long periods - between 30-day reviews, for example. The Immigration and Refugee Board has criticized the lack of urgency accorded to these cases by officials.

Children, like adults, are sometimes detained on the basis of identity. CBSA officers have the ability to detain an individual based on an assessment that a person's identity has not been satisfactorily established. However, the CBSA currently operates without any independent oversight. This poses the risk that children may be detained without assessment of their best interests by the officer in charge. A coroner's inquest into the death of a detained migrant in Vancouver recommended that the CBSA be overseen by an independent ombudsperson. Independent oversight of the CBSA could likewise contribute to an understanding of how broadly the best interests of the child are being incorporated into CBSA practices. Recent actions by Senator Wilfred Moore and Public Safety Minister Ralph Goodale aiming to address this issue are welcomed by UNICEF Canada.

Children should never be detained on the basis of their migration status alone. Children should be exempted from any period of mandatory detention even if they are designated as part of a group of irregular arrivals and/or are an unaccompanied or separated minor. The Committee on the Rights of the Child expressed extreme concern in paragraph 73 of its 2012 Concluding Observations regarding Canada's policy of detaining child migrants:

...the Committee is gravely concerned at the recent passage of the law entitled, *Protecting Canada's Immigration System Act*, in June 2012 authorizing the detention of children from ages 16 to 18 for up to one year due to their irregular migrant status. Furthermore, the Committee regrets that notwithstanding its previous recommendation (CRC/C/15/Add.215, para. 47, 2003), the State party has not adopted a national policy on unaccompanied and asylum-seeking children and is concerned that the *Immigration and Refugee Protection Act* makes no distinction between accompanied and unaccompanied children and does not take into account the best interests of the child.<sup>34</sup>

The Committee is also deeply concerned that the frequent detention of asylum-seeking children is being done without consideration for the best interests of the child. Furthermore, while acknowledging that a representative is appointed for unaccompanied children, the Committee notes with concern that they are not provided with a guardian on a regular basis. Sometimes there are obvious alternatives that are not explored, such as staying with a family member already residing in Canada. Additionally, the Committee is concerned that Roma and other migrant children often await a decision about their deportation, in an uncertain status, for prolonged periods of time, even years.

The Committee recommended in paragraph 74 of its 2012 Concluding Observations that Canada reduce risks to children from detention practices by taking the following steps:

- (a) Reconsider its policy of detaining children who are asylum-seeking, refugees and/or irregular migrants; and ensure that detention is only used in exceptional

circumstances, in keeping with the best interests of the child, and subject to judicial review;

- (b) Ensure that legislation and procedures use the best interests of the child as the primary consideration in all immigration and asylum processes, that determination of the best interests is consistently conducted by professionals who have been adequately applying such procedures;
- (c) Expeditiously establish the institution of independent guardianships for unaccompanied migrant children;
- (d) Ensure that cases of asylum-seeking children progress quickly so as to prevent children from waiting long periods of time for the decisions; and
- (e) Consider implementing the United Nations High Commission for Refugees Guidelines on International Protection No.8: Child Asylum Claims under articles 1(A)2 and 1(F) of the 1951 Convention. In implementing this recommendation, the Committee stresses the need for the State party to pay particular attention to ensuring that its policies and procedures for children in asylum-seeking, refugee and/or immigration detention give due primacy to the principle of the best interests of the child and that immigration authorities are trained on the principle and procedures of the best interest of the child.<sup>35</sup>

UNICEF Canada recommends that the Government of Canada take appropriate steps to comply fully with the Committee on the Rights of the Child's General Comment No. 6 on the treatment of unaccompanied and separated children outside their country of origin and provide asylum-seeking and migrant children with access to safe accommodation appropriate to their age, gender, cultural background, developmental needs and family situation, pending a resolution of their immigration status.<sup>36</sup>

**RECOMMENDATION #7:** That the federal government amend its legislation, regulations and related policies to explicitly prohibit the detention of children who are asylum-seeking, refugees and/or immigrants solely on the basis of their or their parents' migration status.

**RECOMMENDATION #8:** That the federal government ensure that the detention of children who are asylum-seeking, refugees and/or immigrants, where it occurs for reasons other than their or their parents' migrant status (for example, when a parent is detained on the basis of posing a danger to the public) is conducted in a manner consistent with the child's best interests and in compliance with article 37 of the CRC, which provides that such detention "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."

**RECOMMENDATION #9:** That the federal government repeal the *Protecting Canada's Immigration System Act* of June 2012, which gives the Minister of Immigration, Refugees and Citizenship the power to designate a group of persons as 'irregular arrivals' and to make decisions related to the detention of such persons, among other things.

## Family Reunification

The Convention protects children's rights to family. Preventing family separation and preserving family unity are important factors for a child's healthy development, and are recognized in a number of articles in the Convention. Article 9 states that, 'States Parties shall respect the right of the child who is separated from one or both parents to maintain personal relations and direct contact with both parents on a regular basis, except if it is contrary to the child's best interests'.<sup>37</sup> The Committee advises on this right in both their General Comments No. 6 and No. 14. Paragraph 66 of General Comment No. 14 explicitly states, 'When the child's relations with his or her parents are interrupted by migration (of the parents without the child, or of the child without his or her parents), preservation of the family unit should be taken into account when assessing the best interests of the child in decisions on family reunification'.<sup>38</sup>

Family reunification involving children should be a core goal of Canada's immigration and refugee policy. UNICEF Canada recommends that Canada prioritize the reunification of children with parents or legal guardians, whether the child is resident in Canada and seeking application for a parent(s) or guardian(s), or the parent(s) or guardian(s) is/are resident in Canada and seeking application for the child(ren) who has/have remained behind. UNICEF Canada recommends that Canada's immigration and refugee policy incorporate all due legal and administrative provisions that would ensure the unfettered and timely access across borders by a child or children to a parent from whom they have been separated in the context of immigration. Separation in any case should not exceed a period of 6 months – a very long time in the development of a child with negative impacts on bonding, and often increased risk to a child's protection, education and health.

**RECOMMENDATION #10:** That relevant legislation, policy and regulations be amended to provide that children separated from their parents or legal guardians due to migration-related causes are reunited within six months.

**RECOMMENDATION #11:** That fees associated with child migration-related applications be eliminated.

**RECOMMENDATION #12:** That there be repeal of the requirement that individuals who are part of a group of designated 'irregular arrivals' and who have obtained refugee status must wait for a period of 5 years before; seeking sponsorship of their child/ren left behind in their home country or applying to travel abroad.

**RECOMMENDATION #13:** That section 117(9)(d) of the Immigration and Refugee Protection Regulations, which imposes inadmissibility on children whose parents did not disclose them on prior immigration applications, be amended or repealed.

## **Statelessness**

Migrating children and children born of migrants are often at risk of becoming stateless and without a legal identity. Statelessness renders an individual vulnerable to many risks that are ameliorated by having an official nationality, and leaves stateless individuals unable to access many rights to which they are entitled. Statelessness creates unique vulnerabilities among children in particular, including depriving them of family access, health care, education and mobility, and increasing their susceptibility to poverty and exploitation. Statelessness of a child should therefore never be permitted. Children's right to a nationality is protected by articles 7 and 8 of the Convention on the Rights of the Child. Canada has a fairly robust framework to prevent statelessness but there are gaps through which children can fall. The Committee on the

Rights of the Child expressed concern on this matter in paragraphs 40 – 41 of its Concluding Observations to Canada in 2012:

...the Committee is nevertheless concerned about some provisions of the amendment which place significant limitations on acquiring Canadian citizenship for children born to Canadian parents abroad. The Committee is concerned that such restrictions can, in some circumstances, lead to statelessness. Furthermore, the Committee is concerned that children born abroad to government officials or military personnel are exempted from such limitations on acquiring Canadian citizenship.<sup>39</sup>

The Committee recommends that the State party review the provisions of the amendment to the *Citizenship Act* that are not in line with the Convention with a view to removing restrictions on acquiring Canadian citizenship for children born abroad to Canadian parents. The Committee also urges the State party to consider ratifying the 1954 Convention relating to the Status of Stateless Persons.<sup>40</sup>

Canada should therefore seek to ensure that its migration policies are not rendering children stateless. At a minimum, Canadian citizenship should be automatically conferred upon children of Canadian parents in circumstances where those children would otherwise be at risk of stateless status. Providing this citizenship will provide access to services and supports that will allow children to grow into being successful members of their communities.

**RECOMMENDATION #14:** That the federal government amend the *Citizenship Act* in order to restore the right to Canadian citizenship to all children of Canadian parent(s), including second generation children born abroad to foreign-born Canadian citizens.

Current immigration policy allows for a parent to lose their permanent residency status should they leave a sponsoring spouse within two years of arriving in Canada. This may result in the separation of a child from that parent and a loss of financial support, and/or the cancellation of a child's application for residency, should they be listed as a dependent on their parent's residency application. All these consequences are unlikely to be in the best interests of the child. UNICEF Canada welcomes Minister McCallum's statements indicating that the government means to repeal this policy and recommends that it be done as swiftly as possible.

**RECOMMENDATION #15:** That where a parent(s) has lost his/her legal status in Canada as a result of leaving a sponsored relationship with a spouse or partner and a child is affected, his/her status be reconsidered, having regard to the best interests of the child.

## **Implementation**

To ensure that children's rights are effectively applied by those working in the field of immigration and refugee policy, UNICEF Canada recommends that ongoing training be provided for government officials and private personnel who develop policies and regulations and who come into contact with children in the context of migration, including border control authorities, courts, tribunals, detention centres, and the child welfare system. Doing so will also help to counteract systemic discrimination and xenophobia that unfortunately permeates some institutions.

**RECOMMENDATION #16:** That ongoing training on children's rights be incorporated into training and guidance provided to all those professionals who come into contact with children in the context of migration.

### **Accountability**

These recommendations address only a portion of the many risks and challenges that immigrant and refugee children face. Lack of identity documents or precarious status, such as while awaiting refugee determination, can lead to challenges in accessing school, housing, healthcare, and other rights and necessities which are due to the child independent of the child's migration status. A child's migration status must never represent a barrier to their access to or utilization of essential services. Identifying the various ways in which migrant children may best access their rights is a mandate that a National Commissioner for Children and Youth would be best-positioned to assume and assist the Government of Canada in ensuring the protection and integration of increasingly vulnerable migrant children.

**RECOMMENDATION #17:** That the federal government ensure that no child in Canada is without the full rights accorded by legal residency including education and health care.

**RECOMMENDATION #18:** That the federal government enact the position of a National Commissioner for Children and Youth so that the rights, interests and voices of children in Canada can be appropriately understood and safeguarded.

### **CONCLUSION**

Canada is a recognized and respected defender of the rights of children and the rights of refugees and people on the move - at home and around the world. Canada has grown steadily stronger and more prosperous due to the success of our immigrant and refugee populations and the policy orientations that support newcomers to become successful members of our communities. To continue this trend, Canada's policies need to be forward-thinking, adaptive, inclusive and rights-respecting. By incorporating a children's rights perspective into Canadian immigration and refugee policy, Canada can ensure that our youngest newcomers get the best start to life in Canada and are supported to reach their fullest potential. In prioritizing the best interests of the child, the child's right to be heard, non-detention, family reunification, and statelessness, Canada can pave the way for immigrant and refugee children to have successful futures. Canada's immigration policy can strengthen bonds to family, citizenship and nation, and serve as a model of best practice to the world.

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- <sup>1</sup> United Nations. (1989). *The Convention on the Rights of the Child*. General Assembly. 20th November 1989. New York, New York.
- <sup>2</sup> Ibid.
- <sup>3</sup> United Nations. (2012). Concluding Observations on the combined third and fourth periodic reports of Canada, adopted by the Committee at its sixty-first session (17 September – 5 October 2012). Committee on the Rights of the Child. Geneva, Switzerland.
- <sup>4</sup> United Nations. (2005). General Comment No. 6 (2005) on the treatment of unaccompanied and separated children outside their country of origin. Committee on the Rights of the Child. Geneva, Switzerland.
- <sup>5</sup> United Nations. (2012). Concluding Observations on the combined third and fourth periodic reports of Canada, adopted by the Committee at its sixty-first session (17 September – 5 October 2012). Committee on the Rights of the Child. Geneva, Switzerland.
- <sup>6</sup> United Nations. (1989). *The Convention on the Rights of the Child*. General Assembly. 20th November 1989. New York, New York.
- <sup>7</sup> United Nations. (2013). General Comment No. 14 (2013) on the right of the child to have his or her best interests taken as a primary consideration (art. 3, para. 1). Committee on the Rights of the Child. Geneva, Switzerland.
- <sup>8</sup> Ibid.
- <sup>9</sup> Canada. *Immigration and Refugee Protection Act*. S.C. 2001, c. 27. Department of Justice Canada's Justice Laws Website. 2016-07-15. <http://laws.justice.gc.ca/eng/acts/i-2.5/>
- <sup>10</sup> Canada. *Humanitarian and Compassionate Assessment: best interests of a child*. Department of Immigration, Refugees and Citizenship Canada. 2016-03-02. <http://www.cic.gc.ca/english/resources/tools/perm/hc/processing/child.asp>
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- <sup>12</sup> Ibid.
- <sup>13</sup> Ibid.
- <sup>14</sup> Supreme Court of Canada. *Kanathasamy v. Canada (Citizenship and Immigration)*. *Supreme Court Judgments*. 2015 SCC 61. Case No. 35990. 2015-12-10. <https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/15665/index.do>
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- <sup>16</sup> Zilio, Michelle. *Ottawa Lifts Deportation Order for Syrian Teen Detained for Three Weeks*. The Globe and Mail. Feb 18 2016. <http://www.theglobeandmail.com/news/politics/ottawa-lifts-deportation-order-for-syrian-teen/article28795070/>
- <sup>17</sup> Ibid.
- <sup>18</sup> Wilton, Katherine. *Deported Mexican Teen Makes Emotional Plea to Return to Montreal*. The Montreal Gazette. March 23 2015. <http://montrealgazette.com/news/local-news/deported-mexican-teen-makes-emotional-plea-to-return-to-montreal>
- <sup>19</sup> Ibid.
- <sup>20</sup> Ibid.
- <sup>21</sup> United Nations. (2012). Concluding Observations on the combined third and fourth periodic reports of Canada, adopted by the Committee at its sixty-first session (17 September – 5 October 2012). Committee on the Rights of the Child. Geneva, Switzerland.
- <sup>22</sup> United Nations High Commissioner for Human Rights. UNHCR Guidelines on Determining the Best Interests of the Child. May 2008. Geneva, Switzerland. <http://www.unhcr.org/4566b16b2.pdf>
- <sup>23</sup> United Nations. (2013). General Comment No. 14 (2013) on the right of the child to have his or her best interests taken as a primary consideration (art. 3, para. 1). Committee on the Rights of the Child. Geneva, Switzerland.
- <sup>24</sup> United Nations. (1989). *The Convention on the Rights of the Child*. General Assembly. 20th November 1989. New York, New York.
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- <sup>28</sup> Ibid.
- <sup>29</sup> *Immigration Detention Statistics 2015*. Issue Brief. Canadian Council for Refugees. March 2016. <http://ccrweb.ca/en/immigration-detention-statistics-2015>
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- <sup>32</sup> Ibid.
- <sup>33</sup> Ibid.
- <sup>34</sup> United Nations. (2012). Concluding Observations on the combined third and fourth periodic

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<sup>37</sup> United Nations. (1989). The Convention on the Rights of the Child. General Assembly. 20th November 1989. New York, New York.

<sup>38</sup> United Nations. (2013). General Comment No. 14 (2013) on the right of the child to have his or her best interests taken as a primary consideration (art. 3, para. 1). Committee on the Rights of the Child. Geneva, Switzerland.

<sup>39</sup> United Nations. (2012). Concluding Observations on the combined third and fourth periodic reports of Canada, adopted by the Committee at its sixty-first session (17 September – 5 October 2012). Committee on the Rights of the Child. Geneva, Switzerland.

<sup>40</sup> Ibid.