

***Aboriginal Children and Youth:
Urgent Needs and Unmet Obligations***

**A Brief to the U.N. Committee on the Rights of the Child
On the Occasion of the Examination of the Second Report Submitted by Canada**

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Submitted by:

The Ad Hoc Coalition on the Rights of Aboriginal Children in Canada, whose members include:

The Atlantic Policy Congress of First Nation Chiefs

The Commission on Justice and Peace: Canadian Council of Churches

First Nations Child & Family Caring Society of Canada

KAIROS: Canadian Ecumenical Justice Initiatives

Southern Chiefs' Organization (Manitoba)

Table of Contents

The Ad Hoc Coalition on the Rights of Aboriginal Children in Canada	2
Executive Summary	2
Summary of Recommendations	3
I. Canada's Approach	5
II. Implementation of a Rights Based Approach	6
A. Resources and the Comprehensive Land Claims Policy	6
B. Self –Determinations and Bill C-7: The First Nations Governance Act	7
C. Human Dignity and Bill C-31: An Act To Amend the Indian Act	9
III. Child, Family and Community Rights and Needs Funding	11
A. Child Welfare	12
B. The Manitoba Experience: Child and Family Services Framework Agreement Initiative	14
C. Housing	15
Appendix A	17

The Ad Hoc Coalition on the Rights of Aboriginal Children in Canada

On the release of Canada's Second Report to the UN Committee on the Rights of the Child (CRC), and in anticipation of the CRC's review of Canada's compliance to the UN Convention on the Rights of the Child, two national ecumenical coalitions joined with two regional and one national Aboriginal organization to form the Ad Hoc Coalition on the Rights of Aboriginal Children in Canada (The Ad Hoc Coalition). The Coalition's objective was to produce a report on some of the key rights issues facing Aboriginal children in general, and First Nations' children in particular, and to present this report to the UN Committee on the Rights of the Child during its 34th session in Geneva.

Coalition members include the Atlantic Policy Congress of First Nation Chiefs, the Commission on Justice and Peace of the Canadian Council of Churches, the First Nations Child & Family Caring Society, KAIROS: Canadian Ecumenical Justice Initiatives, and the Southern Chiefs' Organization (Manitoba). More information on these organizations is available in Appendix "A".

Executive Summary

The Ad Hoc Coalition acknowledges the many positive steps taken by Canada since it ratified the Convention on the Rights of the Child in 1991 and since it submitted its First Report in 1995. The Ad Hoc Coalition also recognizes, however, as does Canada, that there is still much work to be done, especially in terms of implementing the inherent and treaty rights of Aboriginal children. Under Article 2 of the Convention, States must "ensure that all children within their jurisdiction enjoy their rights." This brief will show that Canada's Aboriginal policy does not uphold this basic principle, or adhere to Aboriginal inherent and treaty rights. In fact, it is the profound concern of many Aboriginal peoples that current federal policies and legislative initiatives will lead to their assimilation.

This brief examines the fundamental issue of how federal legislation threatens the inherent rights of Aboriginal peoples. The brief looks specifically at the federal Comprehensive Land Claims Policy, as well as two pieces of federal legislation: Bill C-31 and Bill C-7 also known as the First Nations Governance Act.

This brief also outlines concerns in the areas of service funding, child welfare and housing. Service funding and child welfare are two areas where Canada and the provinces have made great strides. The Ad Hoc Coalition recognizes the work that has been done in this area and is confident of continued improvement, as long as a "nation to nation" approach prevails. By working with First Nations, Canada will be able to address deficiencies in funding practices that are too often geared to specific symptoms, rather than to underlying fundamental causes such as poverty. Genuine partnerships with Aboriginal peoples will lead to more policies and programs that are culturally sensitive and take into account the unique history and traditions of Aboriginal peoples. With regard to housing, the Ad Hoc Coalition believes that Canada must act quickly to ensure that all Aboriginal children have safe homes in which to live.

Summary of Recommendations

1. Use recommendations 2.3.1 (a) (b) & (c) and 2.3.2 of the 1996 *Royal Commission on Aboriginal People* (RCAP) to guide this work:

Regarding the fulfilment of Canada's international responsibilities with respect to Aboriginal peoples, the Commission recommends that

2.3.1: The government of Canada take the following actions:
(a) enact legislation affirming the obligations it has assumed under international human rights instruments to which it is a signatory in so far as these obligations pertain to the Aboriginal peoples of Canada;
(b) recognize that its fiduciary relationship with Aboriginal peoples requires it to enact legislation to give Aboriginal peoples access to a remedy in Canadian courts for breach of Canada's international commitments to them;
(c) expressly provide in such legislation that resort may be had in Canada's courts to international human rights instruments as an aid to the interpretation of the Canadian Charter of Rights and Freedoms and other Canadian law affecting Aboriginal peoples.

2.3.2: All governments in Canada recognize that Aboriginal peoples are nations vested with the right of self-determination.

2. Use RCAP recommendation 2.2.6 as the basis for a new Comprehensive Claims Policy:

With regard to new treaties and agreements, the Commission recommends that the federal government establish a process for making new treaties to replace the existing comprehensive claims policy, based on the following principles:

(a) The blanket extinguishment of Aboriginal land rights is not an option.
(b) Recognition of rights of governance is an integral component of new treaty relationships.
(c) The treaty-making process is available to all Aboriginal nations, including Indian, Inuit and Métis nations.
(d) Treaty nations that are parties to peace and friendship treaties that did not purport to address land and resource issues have access to the treaty-making process to complete their treaty relationship with the Crown.

3. When negotiating land rights, Canada's policy should conform to the guiding principles in RCAP recommendations 2.4.1, specifically sections (a) to (d).
(a) Aboriginal title is a real interest in land that contemplates a range of rights with respect to land and resources.
(b) Aboriginal title is recognized and affirmed by section 35(1) of the Constitution Act, 1982.

(c) *The Crown has a special fiduciary obligation to protect the interests of Aboriginal people, including Aboriginal title.*

(d) *The Crown has an obligation to protect rights concerning lands and resources that underlie Aboriginal economies and the cultural and spiritual life of Aboriginal peoples*

4. Abandon Bill C-7 and work with First Nations peoples, nation to nation, to address issues of governance, as well as other priorities identified by Aboriginal peoples, including land rights and treaty implementation, poverty, education and employment.
5. Base future First Nations governance discussions on Recommendation 2.3.2 of the Royal Commission on Aboriginal Peoples: *All governments in Canada recognize that Aboriginal peoples are nations vested with the right of self-determination.*
6. Use Recommendation 2.4.2 of the Royal Commission on Aboriginal Peoples as the basis for revising future governance discussions with First Nations: *Federal, provincial and territorial governments, through negotiations, provide Aboriginal nations with lands that are sufficient in size and quality to foster Aboriginal economic self-reliance and cultural and political autonomy.*
7. Use RCAP recommendation 2.3.8 as a guide when working with First Nations to remedy the flaws in Bill C-31 to ensure First Nation status for future generations. *The Commission recommends that the government of Canada recognize Aboriginal people in Canada as enjoying a unique form of dual citizenship, that is, as citizens of an Aboriginal nation and citizens of Canada.*
8. Use the recommendations outlined above when working with First Nations to determine a suitable and useful manner to uphold and implement the rights of Aboriginal children, families, communities and peoples. A first step is to agree to what ‘family’ entails.
9. Implement the substantive recommendations of the Royal Commission on Aboriginal Peoples.
10. In the short term, implement the recommendations of the Joint National Policy Review on First Nations Child and Family Services, and launch a review of off-reserve funding methodologies, to ensure equitable access to sustained and culturally-based, targeted prevention services.
11. Work with First Nations to implement a comprehensive data collection strategy to ensure that all provinces, territories, and First Nations and Aboriginal child welfare providers keep accurate and consistent data on the numbers of Aboriginal children in-care, and the cultural match in services and placements.

12. Work with First Nations to design and deliver services pursuant to a community development framework that is designed and implemented by Aboriginal peoples to address the multi-dimensional and multi-generational impacts of colonization.
13. Allocate adequate resources and work with Aboriginal peoples, to ensure that Aboriginal housing is improved to a decent and healthy standard.
14. In collaboration with Canada, devise and implement a comprehensive strategy and action plan to address the unhealthy condition of many Aboriginal homes.

I. Canada's Approach

In the section of its report dealing with Article 30 of the Convention on the Rights of the Child, (specifically paragraphs 575-581) Canada admits that “overall, Aboriginal people in Canada fare less well than other Canadians,” and “for some Aboriginal people the situation is dire.” Canada also mentions it has been working with Aboriginal peoples to address this problem, and that it has made several major policy announcements on Aboriginal issues, including the *Inherent Right Policy on Aboriginal self-government*, and *Gathering Strength: Canada's Aboriginal Action Plan*.

The Ad Hoc Coalition appreciates the significance of issuing policy pronouncements on Aboriginal issues that are based on “the view that Aboriginal people have a right to govern themselves in relation to matters internal to their communities, integral to their unique cultures, identities, traditions, languages and institutions, and with respect to their special relationship to their lands and resources”, and that “strengthen Aboriginal governance”. However, these pronouncements are substantially weakened if not implemented and reflected in federal legislation and initiatives. In addition, the Ad Hoc Coalition believes that the impact of these pronouncements on the rights of Aboriginal children can be assessed accurately only when measured against other existing and planned government policies and practices.

The Ad Hoc Coalition believes that Canada should not impose Canadian values on First Nations, but that both the Canadian government and First Nations could agree to fully respect universal values in dealings with each other, such as those expressed in the United Nations Charter, the International Bill of Human Rights, and other instruments such as the Convention on the Rights of the Child.

Recommendation for Canada

1. Use recommendations 2.3.1 (a) (b) & (c) and 2.3.2 of the 1996 *Royal Commission on Aboriginal People* (RCAP) to guide this work:

Regarding the fulfilment of Canada's international responsibilities with respect to Aboriginal peoples, the Commission recommends that

*2.3.1 - The government of Canada take the following actions:
(a) enact legislation affirming the obligations it has assumed under international human rights instruments to which it is a signatory in so far as these obligations pertain to the Aboriginal peoples of Canada;*

(b) recognize that its fiduciary relationship with Aboriginal peoples requires it to enact legislation to give Aboriginal peoples access to a remedy in Canadian courts for breach of Canada's international commitments to them;

(c) expressly provide in such legislation that resort may be had in Canada's courts to international human rights instruments as an aid to the interpretation of the Canadian Charter of Rights and Freedoms and other Canadian law affecting Aboriginal peoples.

2.3.2 All governments in Canada recognize that Aboriginal peoples are nations vested with the right of self-determination.

II. Implementation of a Rights Based Approach

II-A. Resources and the Comprehensive Land Claims Policy

Canada's *Comprehensive Land Claims Policy*, which refers to Aboriginal lands not covered by treaty, requires Aboriginal peoples to relinquish their rights or title, (known as extinguishment) to significant shares of their traditional lands as a condition of settlement. Aboriginal peoples do not agree that they should relinquish ownership to receive compensation for sharing their territories with others. Often, the land base that remains with the Aboriginal community is insufficient to allow Aboriginal peoples to promote their right to development and self-determination. For this reason, many communities refuse to participate in the federal comprehensive claims negotiation process.

In a 1987 Pastoral Statement on Aboriginal Rights and the Canadian Constitution, Canada's national churches concluded: "If Aboriginal peoples are to retain their self-understanding as peoples and cultures, land rights are essential.... A land-base with adequate resources is also necessary for developing and sustaining a viable economy. (*A New Covenant*)

In 1999, the UN Human Rights Committee asked that the federal practice of extinguishing inherent Aboriginal rights be abandoned because it violates the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights. Both covenants state that all peoples "... must be able to freely dispose of their natural resources and wealth and ... may not be deprived of their own means of subsistence." Extinguishment also violates several significant principles of Canadian law and the Constitution (section 35) that recognize and affirms the treaty and inherent rights of Aboriginal peoples, including the right of self-determination, to which Canada also refers in its report (para 573).

During the August 2002 review of Canada, the UN Committee on the Elimination of Racial Discrimination raised the issue of extinguishment. Canada's delegation then assured the CERD that extinguishment was no longer a condition of settlement, however, Canadian officials did not later support this position. In fact, despite the concern expressed by the United Nations and other national and international organizations, including the individual members of the Ad Hoc Coalition, Canada continues to move towards broadening the scope of extinguishment. For their part, Aboriginal peoples continue to seek a process in which Aboriginal title and rights to land are acknowledged, and in which resource revenue sharing is a consequence of negotiating treaties with governments.

Question for Canada

- Why does Canada continue to implement a policy that is in violation of the *International Covenant on Civil and Political Rights* (1999, Concluding Observations, paragraph 8), the *International Covenant on Economic, Social and Cultural Rights* (1998, Concluding Observations, paragraphs 17 & 18), and the *Convention on the Elimination of Racial Discrimination* (2002, Concluding Observations, paragraph 331)?

Recommendation for Canada

2. Use RCAP recommendation 2.2.6 as the basis for a new Comprehensive Claims Policy:

With regard to new treaties and agreements, the Commission recommends that the federal government establish a process for making new treaties to replace the existing comprehensive claims policy, based on the following principles:

- (e) The blanket extinguishment of Aboriginal land rights is not an option.*
- (f) Recognition of rights of governance is an integral component of new treaty relationships.*
- (g) The treaty-making process is available to all Aboriginal nations, including Indian, Inuit and Métis nations.*
- (h) Treaty nations that are parties to peace and friendship treaties that did not purport to address land and resource issues have access to the treaty-making process to complete their treaty relationship with the Crown.*

3. When negotiating land rights, Canada's policy should conform to the guiding principles in RCAP recommendations 2.4.1, specifically sections (a) to (d).

- (e) Aboriginal title is a real interest in land that contemplates a range of rights with respect to land and resources.*
- (f) Aboriginal title is recognized and affirmed by section 35(1) of the Constitution Act, 1982.*
- (g) The Crown has a special fiduciary obligation to protect the interests of Aboriginal people, including Aboriginal title.*
- (h) The Crown has an obligation to protect rights concerning lands and resources that underlie Aboriginal economies and the cultural and spiritual life of Aboriginal peoples.*

11-B. Self-Determination and Bill C-7: The First Nations Governance Act

The right of all peoples to self-determination has been recognized by the United Nations and the international community, and is enshrined in international covenants that have been ratified by Canada. The Canadian courts have ruled that the right to self-determination is included in the words “aboriginal rights” in Section 35 of the *Constitution Act, 1982*. This was also the conclusion of the *Royal Commission on Aboriginal Peoples*, which said the right to self-determination is an inherent right that is not given and cannot be taken away. The Ad Hoc Coalition believes that the right to self-determination includes the design and delivery of child

services, and that Canada, in its fiduciary role, should be doing all it can to assist Aboriginal peoples to realize their goals.

Bill C-7, also known as the First Nations Governance Act, was introduced by Canada earlier this year. It contradicts Article 30 of the Convention on the Rights of the Child. In its submission to the Canadian parliamentary committee reviewing the proposed legislation, KAIROS described Bill C-7 as discriminatory and paternalistic, and as part of a federal policy that impedes the efforts of Aboriginal peoples to promote and protect their inherent and treaty rights, including their right to self-determination. Bill C-7 seeks to amend those parts of the *Indian Act* that deal with governance issues. In defining both ‘governance’ and the ‘tools for effective governance’, the legislation contradicts the notion of autonomy implied in the term self-determination.

Many First Nations’ peoples view Bill C-7 as proof that the federal government has no intention of abandoning its current Aboriginal policy. They point out that the Bill ignores the priorities of First Nations, including poverty, health, education, unemployment, treaty implementation and Aboriginal rights, rights confirmed by a governmental survey in 2001.

For their part, First Nations’ leaders claim the Bill is misleading and dangerous because: (1) it does not deal with the First Nations’ vision of governance; (2) it does not respect the right of self-determination that is recognized in the Treaties, in section 35 of Canada’s Constitution Act, and in international law; and (3) it does not strengthen and, in fact, weakens the nation-to-nation relationship between the government and First Nations.

Question for Canada

- How does this proposed legislation promote and implement First Nations’ right to self-determination as outlined in RCAP recommendations 2.3.2 (see below) and 2.3.5 (a)2.3.6? *All governments in Canada recognize that the sphere of the inherent right of Aboriginal self-government encompasses all matters relating to the good government and welfare of Aboriginal peoples and their territories*

Recommendations for Canada

4. Abandon Bill C-7 and work with First Nations peoples, nation to nation, to address issues of governance, as well as other priorities identified by Aboriginal peoples, including land rights and treaty implementation, poverty, education and employment.
5. Base future First Nations governance discussions on Recommendation 2.3.2 of the Royal Commission on Aboriginal Peoples: *All governments in Canada recognize that Aboriginal peoples are nations vested with the right of self-determination.*
6. Use Recommendation 2.4.2 of the Royal Commission on Aboriginal Peoples as the basis for revising future governance discussions with First Nations: *Federal, provincial and territorial governments, through negotiations, provide Aboriginal nations with lands that are sufficient in size and quality to foster Aboriginal economic self-reliance and cultural and political autonomy.*

II-C. Human Dignity and Bill C-31: An Act to Amend the Indian Act

RCAP concluded that since the time of Canadian Confederation, it has been the policy and practice of the federal government to assimilate Aboriginal peoples. Moreover, since Aboriginal children were thought to be “easier” to assimilate than their parents and grandparents, they were the target of federal policies and legislative initiatives aimed at executing the government’s political and social agenda.

Bill C-31, an *Act to Amend the Indian Act*, infringes the treaty and inherent rights of Aboriginal children, including their right to pursue their cultural identity and traditions. Under Bill C-31, Aboriginal children are losing their official Indian status, and all associated rights and benefits.

Bill C-31 had its beginnings in 1981 when an Aboriginal woman argued before the United Nations that certain sections of the *Indian Act* were discriminatory. It was argued that these sections breached the *International Covenant on Civil and Political Rights* because they caused Aboriginal women to lose their official Indian status when they married men who were not identified by the federal government as having Indian status. When the United Nations agreed this was in violation of the human rights of Aboriginal women, Canada undertook to change the legislation.

Although Bill C-31 restored status to those Aboriginal women who lost it after marrying non-status men, it also endowed the federal government with the additional legislative power to eliminate federally recognized and sanctioned Indian status by defining how this status is inherited. This was in direct opposition to the positions taken by both the Assembly of First Nations and the Native Women’s Association of Canada since 1984. Some experts estimate that, within five generations, there will be no legally recognized status Indians in Canada unless the legislation is changed.

This Bill created two classes of status Indians – full and half. Individuals classified under Section 6 (1) are registered as “full” Indians if both parents are, or are entitled to be, registered as status Indians. Individuals classified under Section 6 (2) can be thought of as “half” Indians, with one “full” status, parent.

It is believed these inheritance rules will have a multigenerational effect on First Nations families and communities. For example, the child of parents who are not both full status will be registered as a 6(2). If this 6(2) child in turn marries another 6(2), or someone with no status, their children will not be entitled to registration.

In the introduction to its report, Canada states “references to Aboriginal children include children with Indian status under the Indian Act, non-status children, and Metis and Indian children” (para 4). Unfortunately, this succinct definition obscures the fact that the definitions by the Government of Canada of Status and non-Status, as well as on and off reserve boundaries, continue to create unnecessary barriers for Aboriginal peoples as they create culturally based child and youth services. As the federal and provincial/territorial governments sort out their respective jurisdictional and funding responsibilities, the urgent needs of children and families are falling through government jurisdictional cracks. This is particularly the case for families that move on and off reserve, who and experience dramatic changes in the range and access to

culturally based services. Funding formulas and jurisdictional arrangements must put the needs of children and families first.

First Nations, Métis, and Inuit communities are Nations of children, youth, and families with distinct needs. There is a need to change current delivery structures which are based on their place of residency, rather than on their membership, identity, rights and cultural strengths. Aboriginal children and youth are a group already at risk for suicide, school dropouts, alcohol and drug abuse, teen pregnancy, imprisonment, poverty, and all the social problems issues prevalent in First Nations communities.

A study commissioned by the Southern Chiefs' Organization (SCO) demonstrates the scope of Bill C-31's impact. According to the study, approximately 2820 or 12% of all children born to SCO Nations since Bill C-31 took effect lack entitlement to registration. Roughly 780 of these children live on reserve (*Stewart Clatworthy, First Nations Membership and Registered Indian Status*). The study also anticipates that, after four generations, less than 1 in 5 children born on reserve, and 1 in 20 children born off reserve, will qualify for registration. The study also anticipates that, within 5 generations, there will be no status SCO descendants.

The Ad Hoc Coalition is concerned that, by reducing the number of First Nations people with recognized status, Bill C-31 will allow Canada to reduce, and eventually end, its constitutionally entrenched and court upheld responsibility to protect and uphold the rights of Aboriginal peoples.

The following points demonstrate how this process impacts Aboriginal children and their needs for healthy development:

1. Funding for elementary and secondary education is currently based on student enrolment and includes both status and non-status students attending on-reserve schools. There is a concern that the federal government will not fund non-status reserve residents who attend schools off reserve. This is significant when one considers that, by some estimates, the number of non-registered students will increase 15% within 25 years and 37% within 50 years.
2. In post-secondary education, Canada provides financial support only to status students. Non-status descendants are not entitled to post-secondary support. Under Bill C-31, it is expected that non-status students will make up about 8% of the post-secondary age group in 15 years, 17% in 25 years, and 52% in 50 years.
3. Social assistance is another area of concern. Currently, federal funding for benefits is limited to registered status Indians, although comprehensive funding arrangements allow First Nations to administer benefits to non-status reserve residents and to recover those costs from the province. An increase in non-status beneficiaries may lead to the need for new funding arrangements between provincial and federal departments.
4. With regard to housing on reserves, Canada provides resources for housing construction and renovation for registered Indians only. Funding is also subject to resource availability and

regional priorities. New housing needs for non-registered households are expected to rise to about 5% in 25 years, and 23% of the total in 50 years.

5. Health Canada funds non-insured health benefits for the children of registered Indian and Inuit populations, to the age of 1 year regardless of the child's registry status. After a child's first year, the loss of Indian status results in the loss of non-insured health benefits. The number of pharmacy and dental users not eligible for benefits is expected to rise to about 9% in 15 years, 14% in 25 years and 28% in 50 years. The cost associated with providing these services to non-registered descendants is expected to rise to about 1.4 million annually in 15 years, 3.0 million in 25 years and to exceed 10 million annually in 50 years.

Recommendation for Canada

7. Use RCAP recommendation 2.3.8 as a guide when working with First Nations to remedy the flaws in Bill C-31 to ensure First Nation status for future generations. *The Commission recommends that the government of Canada recognize Aboriginal people in Canada as enjoying a unique form of dual citizenship, that is, as citizens of an Aboriginal nation and citizens of Canada.*

III. Child, Family and Community Rights and Needs Funding

The fundamental strengths of every Aboriginal child and youth are the traditional values, cultures, beliefs, and ways of their peoples. This strength and knowledge has sustained First Nations peoples throughout generations of colonial and other assimilation processes. The intergenerational consequences of this on past First Nations families, including adoptions and apprehensions, are a perpetual cycle in which traditional values of child rearing have been undermined, devalued and outlawed. This history has damaged the cohesion of indigenous peoples, the development of positive parenting models, and the general physical and mental health of First Nations children. It is ironic that Canada's one reservation to the Convention on the Rights of the Child (related to 'adoption' and 'family') implicitly recognizes this.

As noted in repeated studies, including RCAP, the impacts of colonization are multi-dimensional and multigenerational and so require comprehensive and holistic responses. Sustained improved outcomes for youth and families will only be possible when there has been significant implementation of the RCAP recommendations, coupled with focused investment in coherent, culturally- based child and family service programs for Aboriginal peoples resident on and off reserve.

The Ad Hoc Coalition is concerned that Canada is not, based on its second report to the UN, sufficiently aware of the deficiencies inherent in existing initiatives and funding practices. Too often, current programs targeted at Aboriginal peoples respond to immediate needs, without focusing on the undercurrents that shaped them. Child maltreatment is one example. There is significant research supporting the correlation between poverty and increased child maltreatment rates; however, very little progress has been made in eradicating child poverty for Aboriginal children and youth, with 53% of Aboriginal children living below the poverty line in Canada.

In its concluding observations of Canada's first report in 1995, the Committee on the Rights of the Child expressed concern over the emerging problem of child poverty, and emphasized the need for special programs and services to provide the necessary care, especially in terms of

“education, housing and nutrition,” for children who are brought up in “problematic environments” (para 83).

The Ad Hoc Coalition applauds Canada’s endorsement of First Nations Child and Family Service (FNCFS) agencies but is concerned that funding for these organizations is inadequate, improperly delegated and, the overall approach to providing services does not adequately take into account Aboriginal culture or history.

Recommendation for Canada

8. Use the recommendations outlined above when working with First Nations to determine a suitable and useful manner to uphold and implement the rights of Aboriginal children, families, communities and peoples. A first step is to agree to what ‘family’ entails.

III-A. Child Welfare

From a child welfare perspective, Aboriginal children face significant challenges. Although there are inconsistent data collection methodologies amongst the various provincial and territorial child welfare agencies, the best estimate indicates that at least 40% of the 76,000 children in-care are Aboriginal children. In provinces such as Manitoba, the figure is 78% (*Aboriginal Justice Inquiry – Child Welfare Initiative, 2001*). There are now approximately three times more Aboriginal children in-care today than there were during the height of residential school operations in the 1940s. Trend data from the Department of Indian Affairs and Northern Development indicate that the numbers of Status Indian children on reserve has increased a staggering 71.5% from 1995 to 2001, and that First Nations children are four to six times more likely than non-Aboriginal children to come into care. (*McKenzie, University of Manitoba, 2002*). Although comparable data are not available for off-reserve residents, an examination of provincial and territorial child in-care numbers indicates that these numbers are also increasing.

The nature of Child and Family Services on reserve often means that First Nations children have to leave their home communities to be placed in foster care. In addition, those First Nations children who are not in-care encounter a lack of resources and support, as the federal government only provides specific funding for those who are in-care.

Complicating matters further, child welfare services for First Nations children are not easy to administer because of the remote location of many reserves. Of significant note is the difficulty in providing adequate services for special needs children in these remote areas. In addition, although many children in-care speak only their native languages, services for them are only available in English or French.

Also, despite principles mandated by the provinces to give primary consideration to First Nations family members in cases of foster care, temporary placement and adoption, it is still rare for First Nations children to be placed with First Nations families within the current Provincial child and family welfare systems.

Not surprisingly, conditions are far worse for First Nations children with disabilities. The Canadian Association for Community Living (CACL) estimates that 5 – 7% of Canadian

children, and 60% of all children in-care have some form of disability. The CACL emphasizes that children with disabilities are more susceptible to ending up in the care of child welfare agencies, living in low-income families, being subject to sexual abuse and violence, and to be excluded from regular education (*Child Welfare League of Canada, 2003*).

Moreover, the rate of disability for First Nations people is twice as high as for non-Aboriginal Canadians. For youth between the ages of 15 –24, the disability rate is three times that of non-Aboriginal youth. There is a high proportion of fetal alcohol syndrome/ fetal alcohol effects among First Nations children with disabilities. In fact, it is estimated that First Nations children are between three and thirty times as likely as non-Aboriginal children to suffer from FAS/FAI (*Standing Committee on Human Resources Development and the Status of Persons with Disabilities, 2003*). Many support services for special needs children are not readily available unless children are placed in the care of child welfare agencies. It is common for these children to be placed in-care in order to gain access to specialized disability support services that are not funded for biological families.

The Ad Hoc Coalition is concerned that Canada may not intend to address the lack of culturally-sensitive programs. A key element required to stem the tide of First Nations and Aboriginal children entering into care is the provision of targeted prevention services, holistic and interdependent culturally-based services intended to ameliorate risk to children and maintain them in their families (*McDonald, R-A. J., & Ladd, P., et.al. 2000*). Currently, there are few culturally-based services of this nature available to families on or off reserve, despite the research demonstrating that child outcomes are improved when there is a cultural match in service design and delivery (*Chandler, 2002; Cornell & Kalt, 2002*). It is critical that service systems and programs be designed and run by people who understand the languages, history, culture, and traditions of those they are helping. In light of the rich cultural diversity of Aboriginal peoples, there is a need to ensure that service providers do not disrespect the differences amongst cultures by diluting cultural programming so that it responds only to the common denominators of Aboriginal peoples.

In addition, the Ad Hoc Coalition believes that Canada's financial commitments are insufficient to address deficiencies in programs and services. For example, despite the significant growth in the numbers of Aboriginal children in-care, and a recommendation in the Joint National Policy Review (*McDonald, R-A. J., & Ladd, P., et.al. 2000*), the Canadian government continues to refuse funds to First Nations welfare agencies in order to mitigate risk factors for children and youth on reserves. Least disruptive measures (services provided to children and their families identified as being at risk of child maltreatment) are under-funded and often targeted for cost reductions. Federal funding formulas for Aboriginal child welfare agencies continue to place a disproportionate emphasis on child removal. There is not adequate funding for family preservation or community development models.

The Ad Hoc Coalition believes that sustained funding for prevention services could begin to to redress colonization. Discriminatory funding practices do not take into account the experience of living in an Aboriginal community, so that better care is available away from the child's band, even through provincial welfare.

III-B The Manitoba Experience: Child and Family Services Framework Agreement Initiative

On December 7, 1994, the Assembly of Manitoba Chiefs signed the Framework Agreement Initiative (FAI) on behalf of sixty First Nations communities in Manitoba. The primary objectives of the FAI are to dismantle the existing departmental structures of the Department of Indian and Northern Affairs, to ensure that First Nations governments are legally empowered to meet the needs of their peoples, and to restore to First Nations governments the jurisdictions consistent with the inherent right of self-government.

In 1994, Child and Family Services was identified as a “fast-tracked” item under the Framework Agreement Initiative. Under the FAI, First Nations governments will have full control over policy and legislation concerning Child and Family Services.

Currently, the FAI representatives of the Southern Chiefs’ Organization, Manitoba Keewatinowi Okimakanak, and the Assembly of Manitoba Chiefs are still negotiating an Agreement In Principle for the transfer/restoration of jurisdiction of Child and Family Services. Federal negotiators have expressed that certain factors will not be negotiable. This will deprive First Nations of absolutely essential elements of the self-government process. Canada requests assurance from First Nations negotiators that First Nations governments will aggregate into larger administrative and political organizations. Aggregate administrations will permit the federal government easier means of administering funds, but will compromise the very essence of this Initiative.

First Nations negotiators have stressed that holistic and comprehensive First Nations Child and Family welfare systems must encompass many factors, such as issues pertaining to family maintenance and justice. Canada has expressed that certain aspects of this holistic system infringe on jurisdictions not typically contained within Provincial Child and Family Services. Subsequently, Canada has requested the presence of Provincial representatives at the negotiating table for the purposes of participation, even though the Province is not a party to the negotiations.

Question for Canada

- If First Nations Child and Family Service agencies, which receive their mandate and funds from the federal government, cannot match provincial funding for families and communities in similar circumstances, how can they offer similar protection, attention and services?

Recommendations for Canada

9. Implement the substantive recommendations of the Royal Commission on Aboriginal Peoples.

10. In the short term, implement the recommendations of the Joint National Policy Review on First Nations Child and Family Services, and launch a review of off-reserve funding methodologies, to ensure equitable access to sustained and culturally-based, targeted prevention services.

11. Work with First Nations to implement a comprehensive data collection strategy to ensure that all provinces, territories, and First Nations and Aboriginal

child welfare providers keep accurate and consistent data on the numbers of Aboriginal children in-care, and the cultural match in services and placements.

12. Work with First Nations to design and deliver services pursuant to a community development framework that is designed and implemented by Aboriginal peoples to address the multi-dimensional and multi-generational impacts of colonization.

III-C. Housing

In its concluding observations following consideration of Canada's initial report in May 1995, the Committee on the Rights of the Child noted with concern "the special problems still faced by children from vulnerable and disadvantaged groups, such as Aboriginal children, with regard to the enjoyment of their fundamental rights, including access to housing and education." (para 17)

The Ad Hoc Coalition acknowledges the efforts made by Canada to alleviate this serious problem, including, as mentioned in Canada's report, the Rural and Native Housing Program (RNH), the Residential Rehabilitation Assistance Program (RRAP), which includes a First Nations component, the Remote Housing Initiative and the On-Reserve Remote Housing Initiative (para 341).

However, the Ad Hoc Coalition's concern is that these and other initiatives are not sufficient to expeditiously resolve the sub-standard living conditions of Aboriginal children. In its report, Canada admits that, while "the majority of Canadian families live in housing that meets or exceeds standards for suitability", Aboriginal households "have higher proportions of people" who need better housing (para 345). Canada also concedes that "housing amenities are inadequate in many Aboriginal communities," and that "approximately 38,000 new on-reserve dwelling units will need to be constructed between 1997 and 2007 (para 249)." This is very similar to what Canada acknowledged the situation to be back in 1998 (para 17) in the review of Economic, Social and Cultural Rights.

Poor housing has a negative impact on the health, education and overall social conditions of First Nation children, individuals and communities. Although there have been signs of improvement, there is still a critical shortage of adequate housing to accommodate a young and growing population. In 2001, Indian and Northern Affairs Canada estimated there was a shortage of about 8,500 houses on reserve and that about 44 percent of the existing 89,000 houses required renovations. The growth rate of the on-reserve population is twice that of the Canadian average, with more than half the population under 25 years of age. (*Report of the Auditor General – Federal Government Support to First Nations Housing On Reserve – April 2003*)

The Assembly of First Nations, the national organization representing the interests of First Nations in Canada, estimated that about \$750 million would be required annually to meet the housing needs of the growing on-reserve population and that an additional \$2.5 billion would be needed to deal with the shortage of adequate houses. (*AFN – August 2003*)

The Ad Hoc Coalition is also concerned by the lack of emphasis in Canada's report on the health problems being caused by mold and mildew contamination in homes.

Poor indoor air quality, including harmful molds with their potential in damaging health effects, is a growing concern in First Nation communities. Mold tends to be more prevalent on reserves because of chronic flooding, overcrowding, inadequate ventilation, poor maintenance. (*Indian and Northern Affairs Canada - August 2003*)

The Auditor General, in her April 2003 report to Parliament, stated she was concerned that although mold contamination has been identified as a serious and growing health and safety problem for several years, a comprehensive strategy and action plan has not yet been developed. The Department of Indian and Northern Affairs Canada and Canada Mortgage and Housing Corporation, together with First Nations, have not fully assessed the extent of mold contamination on reserves and the full cost of remediation, which could amount to more than \$100 million based on preliminary estimates in three regions. (*Report of the Auditor General – April 2003*)

The Ad Hoc Coalition believes that the current steps Canada is taking to improve the living conditions of Aboriginal peoples are not adequate. In Canada's report to the U.N. there is no mention of increased financial commitment to the degree expressed by the Assembly of First Nations or the Auditor General of Canada. Therefore, the Ad Hoc Coalition is of the opinion that an unacceptable percentage of Aboriginal households will continue to remain sub-standard.

Recommendations for Canada

13. Allocate adequate resources and work with Aboriginal peoples, to ensure that Aboriginal housing is improved to a decent and healthy standard.

14. In collaboration with Canada, devise and implement a comprehensive strategy and action plan to address the unhealthy condition of many Aboriginal homes.

Appendix “A”

Additional information on the members of the Ad Hoc Coalition on the Rights of Aboriginal Children in Canada

Atlantic Policy Congress of First Nation Chiefs

Nikanitaiek - "People's Moving Forward"

The Atlantic Policy Congress is a policy research and advocacy secretariat that analyzes and develops culturally relevant alternatives to federal policies that impact on the Mi'kmaq, Maliseet and Passamaquoddy First Nation communities and peoples. We provide a strategic voice and collective approach to developing policies of self-government by self-determining peoples and First Nation governments. Our mandate is to develop culturally relevant alternatives to federal policies.

Commission on Justice and Peace: Canadian Council of Churches

The Canadian Council of Churches is "a community of churches which confess the Lord Jesus Christ as God and Saviour according to the Scriptures and therefore seek to fulfil together their common calling to the glory of one God, Father, Son and Holy Spirit, and also other churches which affirm the same faith but which do not make doctrinal confessions." (Article II of the Council's Constitution)

In November 1995, the Governing Board of the Canadian Council of Churches determined that the Council, and all its components, would function as a forum. The forum model recognizes our diversity and provides a method by which we can work together, acknowledging our unity as Christians yet remaining faithful to the particularity of our respective traditions. It allows the widening of the ecumenical circle and has the potential for providing renewed commitment to ecumenism. The commission on Justice and Peace is a forum for consultation, coordination, planning and co-operation in matters of justice and peace. It works with churches and various ecumenical groups. The purpose of the Commission is to provide a forum for member churches of the Canadian Council of Churches to share information and concerns among those involved in ecumenical work on peace and social justice in Canada and the world; reflect biblically and theologically on peace and social justice, and facilitate the cooperation of the churches in peace and justice concerns.

First Nations Family & Child Caring Society of Canada

The First Nations Child and Family Caring Society of Canada (FNCFCS) is a national organization developed by First Nations child and family service agencies at a national conference held at the Squamish Nation in 1998. Over 125 First Nations child and family service agencies across Canada look to the FNCFCS for culturally based research, networking, and professional development resources.

The goals of the First Nations Child and Family Caring Society of Canada are to stimulate discussion between local, regional, provincial and national child and family service agencies on current research, policies and/or practices that impact on or benefit First Nations children, youth, families and communities; to promote networking and the exchange of ideas

among First Nations practitioners, academic researchers, policy makers and advocates who work in the First Nations child and family services field; to assist in building and strengthening research capacity among First Nations individuals, agencies and organizations engaged in child and family services research, policy and practice; and to promote the training of professional staff, researchers, caregivers and volunteers.

KAIROS: Canadian Ecumenical Justice Initiatives

KAIROS is a national organization that continues the work of the former Aboriginal Rights Coalition, along with the justice work of ten other previously independent ecumenical coalitions. KAIROS is formed by the Anglican Church of Canada, Canadian Catholic Organization for Development and Peace, Canadian Conference of Catholic Bishops: Social Affairs Commission, Canadian Religious Conference, Christian Reformed Church in North America, Mennonite Central Committee of Canada, Evangelical Lutheran Church in Canada, Presbyterian Church in Canada, Primate's World Relief and Development Fund, Religious Society of Friends (Quakers) and the United Church of Canada.

KAIROS is committed to promoting principles of justice, peace and the protection of human rights. For three decades these churches have worked to improve the relationship between Aboriginal and non-Aboriginal peoples in Canada by calling for: (1) recognition of Aboriginal title and nationhood; (2) implementation of Aboriginal land, treaty and inherent rights; and (3) affirmation of the historic rights of Aboriginal peoples as they are recognized in international law and the Canadian constitution, including the right to exercise their autonomy, structure their own solutions, and have access to sufficient land and resources.

Southern Chiefs' Organization (SCO)

Chiefs-in-Summit

The Chiefs-in-Summit is the primary governing body of the Southern Chiefs' Organization Inc., which represents 34 First Nations in southern Manitoba.

The Summit is the forum for the Southern First Nations to conduct nation-to-nation discussions, consultations and deliberations and to collaborate on any matter dealing with the Southern member First Nations.

Objectives:

- to assist member First Nations in the advancement and achievement of their goals as mandated by the Chiefs Meeting in Summit;
- to provide a common front for initiatives mandated by the Chiefs Meeting in Summit;
- to promote and assist member First Nations in providing good government for their First Nations;
- to assist member First Nations in promoting and defending Treaty and Aboriginal rights as mandated by the Chiefs in Summit;
- and to assist member First Nations in holding the Crown, and holding the federal and provincial governments responsible for the fulfilment of their fiduciary duties and other responsibilities and obligations.