

Canada's Treatment of Non-citizen Children

Canada has signed the UN Convention on the Rights of the Child, thereby promising to respect the basic rights of children.

But the rights of children who are not Canadian citizens are not always respected.

In 2012 the UN is examining Canada on our compliance with the Convention on the Rights of the Child. The review will be conducted by the UN Committee on the Rights of the Child.

The treatment of refugee and immigrant children is one area that needs special attention. Among the issues of particular concern:

- > Refugee and immigrant children are **kept in detention**
- > Refugee children are **kept separated from their families**
- > **Separated refugee children** are not properly cared for
- > **Trafficked children** are not guaranteed protection
- > Children are made **stateless**
- > Children are **deported without consideration of their best interests**

This review is a great opportunity for change – Canada can do better!



A child is defined as any person under the age of 18, unless a country's law defines children differently.



Canadian Council for Refugees
Conseil canadien pour les réfugiés



Canada Keeps Children in Detention

The Convention on the Rights of the Child says:

No child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time.

- Article 37(b)

What actually happens in Canada:

Many in Canada might be surprised to learn that children are routinely held in immigration detention centres, for weeks and even months at a time, despite the fact that Canadian law says that they should only be detained as a last resort.²

Detention of children is not limited to exceptional circumstances in Canada and their best interests are not always considered.³



Bill C-4, introduced in Parliament in June 2011, would require mandatory detention of some children for a year. This would constitute arbitrary detention and would clearly violate Article 37 of the Convention on the Rights of the Child.

What is the impact of detention on children:

In Australia, a national inquiry into detention of children heard evidence about the mental health impacts:

Children in detention exhibited symptoms including bed wetting, sleep walking and night terrors. At the severe end of the spectrum, some children became mute, refused to eat and drink, made suicide attempts and began to self-harm, such as by cutting themselves. Some children also were not meeting their developmental milestones.¹

Over 40 Tamil children who arrived on BC shores by boat in the summer of 2010 were detained, although they had just spent 3 months on a dangerous boat trip. Some were only released after the intervention of a Federal Court judge, because the government was fighting to keep them behind bars.⁴

In recent years, between 200 and 500 refugee children have been held in detention each year. In 2009-2010, one in five of these children spent over 10 days in detention.⁵

¹ A last resort? National Inquiry into Children in Immigration Detention, Australian Human Rights' Commission, 2004, www.hreoc.gov.au/human_rights/children_detention_report/summaryguide/8_mental.htm.

² Immigration and Refugee Protection Act, section 60.

³ Detention and Best Interests of the Child: Report Summary, CCR, 2009 ccrweb.ca/files/detentionchildrensummary.pdf.

⁴ Opening our eyes to the children, CCR, 2010, ccrweb.ca/en/opening-our-eyes-children.

⁵ The Human and Financial Cost of Detention of Asylum-Seekers in Canada, Delphine Nakache, UNHCR, 2011, www.sciencesociales.uottawa.ca/edim/fra/documents/1.pdf.



Canada Keeps Children in Detention

Why Are Children Detained?

Flight Risk: an immigration officer believes they may not present themselves in the future (they believe that they will try to escape immigration officers and stay in Canada living “underground” or without status).

Peter, aged 5, and Samuel, aged 3, were detained in the spring of 2009 with their mother, who was facing deportation to her country of origin in the Caribbean. They were detained on the grounds of flight risk: an immigration officer did not believe the mother would show up for removal. The family was deported after spending 11 weeks in detention.

Identity: an immigration officer is not satisfied of their identity.

Albert was 3 years old when he was detained in late 2008, along with his father, after they made a refugee claim at the immigration office in Montreal. They were detained on identity grounds. They had given identity documents to government officials, but these were considered insufficient to establish their identity. Albert and his father were released after 30 days in detention, once they had arranged for more identity documents to be sent.



Children in Detention but not “legally detained”:

In practice, children are frequently in detention with a parent even though they are not “legally detained”. This happens when the child is a Canadian citizen, or for other reasons doesn’t have a detention order against them. The child may nevertheless accompany the parent into detention, because that is the best or only option available in the circumstances. The law doesn’t list best interests of the child among the factors to be considered in the review of detention of adults. So what happens? The best interest of the child is not considered if a child is in detention with their parents but not actually “legally detained.” These children become invisible, and they fall through the cracks.

By not considering their best interest, the government acts as if they weren’t being detained. But they are. We can’t deny it and we have to make it stop.

Ms Okwuama was in detention with her two year-old son, Jacob, and a second child born while she was in detention. The baby, as a Canadian citizen, was not legally detained and she is never mentioned in the 30-day detention review decision.

Akin, then two months old, and his mother were detained for identity reasons for 49 days.

Solution:

The government should find viable alternatives to keeping children in immigration detention that are in the best interests of children.



Canada Stops Families from Reuniting

Many children are left behind when their parents come to Canada as refugees. Once the parents are granted refugee status, they apply to bring their children. But the processing often takes years. Children may be at particular risk due to insufficient food, inadequate health care, lack of access to schooling for children, forced recruitment of child soldiers and sexual exploitation and rape. Refugee children, like all children, need to be with their parents.

The Convention on the Rights of the Child says:

[...] applications by a child or his or her parents to enter or leave a State Party for the purpose of family reunification shall be dealt with by States Parties in a positive, humane and expeditious manner.

- Article 10(1)



Zeynab, a Somali refugee resettled to Canada in 2008, is waiting to be reunited with her baby daughter (pictured left), left behind in Kenya.

According to current excruciatingly slow processing times at Nairobi, she was told to expect to wait 31 months before her young daughter joins her in Canada.

On the last two occasions that the UN Committee on the Rights of the Child examined Canada on its compliance with this Convention, the Committee expressed its concerns about the slowness of refugee family reunification:

- > In 1995, the Committee recommended that “every feasible measure be taken to facilitate and speed up the reunification of the family in cases where one or more members of the family have been considered eligible for refugee status in Canada.”
- > In October 2003, the Committee noted that this concern had been “insufficiently addressed”.

Little has changed since then.

These are some of the problems:

- > Children seeking to be reunited with parents in Canada wait many months and even years for processing at some Canadian visa offices. The delays are worst at the visa office in Nairobi.⁶
- > Some families, especially Africans and Haitians, are forced to do DNA tests, which are expensive and time-consuming.⁷
- > Some children are prevented from reuniting with their families in Canada, because of the “excluded family member” rule (R. 117(9)(d)).⁸

Solution:

Reuniting children quickly with their parents in Canada, and in particular speeding up refugee family reunification at the Nairobi visa office.

⁶ Nairobi: Long delays, CCR, ccrweb.ca/en/nairobi.

⁷ DNA Tests: A barrier to speedy family reunification, CCR, 2011, ccrweb.ca/files/dnatestests.pdf.

⁸ Families Never to be Reunited: Excluded family members, CCR, 2008, ccrweb.ca/files/famexcluprofilesen.pdf. Family reunification, CCR, ccrweb.ca/en/family-reunification.



Canada has No National Policy to Take Care of Separated Children

Separated children are: people under the age of 18 who come to Canada without a parent or legal guardian and ask for refugee status.

Why is it important to take care of separated children?

- > Special attention needs to be paid to them because they are extremely vulnerable. They are outside their own country and have no parent to care for them.
- > In many cases, they have been through traumatizing hardships, such as witnessing the violent death of their family members, being targeted or recruited in armed conflicts, being sexually assaulted, trafficked, and/or persecuted, and being sent on a long international journey alone.⁹

According to Article 20 of the Convention on the Rights of the Child:

Canada is obliged to make sure that children seeking refugee status receive necessary protection and care, and must take particular care when they are separated from their parents.

The UN Committee on the Rights of the Child said about Canada:

In 2003, the Committee recommended that Canada adopt and implement a national policy on separated children seeking asylum in Canada.¹⁰

What actually happens in Canada?

Despite these clear recommendations to Canada and the extreme vulnerability of separated children claiming refugee status:

- > There is still no national policy to make sure that their rights are properly taken care of. Separated children seem to fall into the gap between federal responsibility for immigration and provincial responsibility for youth protection.
- > Practices vary widely across the country, with some children lacking anyone in the role of guardian of their best interests.

Significant work has already been done to identify the elements that should be included in a national policy on separated children.¹¹

Solution:

The government should work in consultation with stakeholders to adopt a national policy to take care of separated children.

⁹ *Separated children seeking asylum in Canada*, UNHCR, 2001, ccrweb.ca/separated.pdf.

¹⁰ *Concluding observations: Canada*. UN Committee on the Rights of the Child, 27 October 2003.

¹¹ *Best Practice Statement: Separated Children in Canada*, International Bureau for Children's Rights, bit.ly/wx6ugb.



Canada Doesn't Protect Trafficked Children

What is human trafficking?

A person who is trafficked is kept under the control of traffickers and exploited in some way, sometimes after having been transported across a border. For example:

A child is brought into Canada with a family. He is not sent to school: instead he is made to work in the home.



What happens to survivors of human trafficking in Canada?

Canadian law criminalizes trafficking, rightly treating it as a very serious crime and imposing heavy penalties on those found guilty of trafficking. However, the only place in the *Immigration and Refugee Protection Act* where trafficked persons

are mentioned is in the regulation which includes having been trafficked as a factor in favour of detention, including for children. There is nothing in the law to protect the rights of trafficked persons specifically.

Trafficking happens in Canada, but **Canadian law does not protect trafficked persons**, including children. Detained and deported, they are treated more as criminals than as victims of a crime.

What are the particular needs of children who have been trafficked?

All people who have been trafficked need support in getting their lives back on track, but children have the most needs of all. Canada needs to make sure that they are safe, and don't fall back into the hands of traffickers. Canada needs to return them to their parents, if that is the best solution, and otherwise find another appropriate guardian.¹²

Solution:

Amend the *Immigration and Refugee Protection Act* to guarantee the protection of trafficked children.

¹² *Protecting trafficked persons in Canada*, CCR, ccrweb.ca/en/trafficking.



Canada Makes Children Stateless

What is a stateless person?

Being stateless means that no state recognizes you as a citizen.¹³

What does the UN Convention on the Rights of the Child say about statelessness?

Article 7 of the Convention says that every child has the right to a nationality. Governments must protect this right, especially where the child would otherwise be stateless.

How does Canada make children stateless?

Canada's Citizenship Act was changed in 2009, limiting Canadian citizenship to the first generation born to Canadian parents outside Canada. This change has the effect of leaving some children stateless. Consider this scenario:

Ana was born overseas to Canadian parents who were working with an international humanitarian organization. Ana grew up in Canada but as a young adult, she decided to follow her parents' example and volunteered abroad. While overseas, she met a refugee and they are expecting a child. The father's country of origin no longer recognizes him and the country where they are living does not give citizenship by birth on the territory. Under amendments to the Citizenship Act passed by Parliament in 2009, Ana's child will be born stateless.¹⁴

There are 12 million stateless persons in the world, and now Canada is adding new stateless children to the number.



Chloé was born in July 2009 in Belgium, to an Algerian mother and a Canadian father. She was denied Canadian citizenship because her father was born outside Canada to a Canadian father. Nor was Chloé eligible for citizenship under Algerian or Belgian law, leaving her stateless.

Solution:

Amend the Citizenship Act so that no child of a Canadian citizen is stateless.

¹³ This is different from being without status, which means you are living in a country where you do not have any immigration status (although you may have the citizenship of another country).

¹⁴ *Canadian Citizenship - Impact of changes*, CCR, 2009, ccrweb.ca/documents/citizenship09.htm.



Best Interests of the Child

The Convention on the Rights of the Child says:

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 child¹⁵ shall be a primary consideration.

- Article 3(1)

Some areas where Canada fails to respect this obligation:

- > Canada's *Immigration and Refugee Protection Act* only requires consideration of children's best interests in certain specific situations, in contrast to the Convention which requires it in all actions concerning children.
- > While the Convention says that children's best interests must be a "primary consideration", the Act only requires that they be "taken into account."
- > Because the references in the Act to best interests are limited to specific situations, the government has argued before the courts that they should not be considered in other situations, including when it comes to deportation, or when a child is affected by the detention of a parent.
- > As a result, many immigration decisions affecting children continue to be made without appropriate (or in some cases any) consideration of the "best interests of the child."¹⁶

Solution:

Amend the *Immigration and Refugee Protection Act* to give full consideration to the best interests of children affected in any immigration decision, including the decision to deport.

¹⁵ The principle of the best interests of the child can be seen as a kind of summary of all the rest of the Convention. It articulates the obligation to make sure that all actions taken concerning children have their best interests at heart.

¹⁶ *Impacts on children of the Immigration and Refugee Protection Act*, CCR, 2004 ccrweb.ca/files/children.pdf.



CANADIAN COUNCIL FOR REFUGEES
6839A Drolet #302, Montréal QC, H2S 2T1
tel. (514) 277-7223, fax (514) 277-1447
email: info@ccrweb.ca website: ccrweb.ca