

The Impact of COVID-19 on Children & Youth's Human Rights:

An Overview of Risks & Recommended Responses

Prepared for The Office of the New Brunswick Child & Youth Advocate

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INTRODUCTION

The World Health Organization declared the outbreak of COVID-19 a global pandemic in March 2020. Since then, Canada has been under varying degrees of shutdown measures and restrictions to reduce the spread of this virus. While this pandemic has affected virtually everyone in some way, children and youth are particularly vulnerable during this time. They are very much the “hidden face of the coronavirus pandemic.”¹ UNICEF Canada has said that this

is not only a health crisis, but also a children’s crisis. . . There is a perception among many that because children are less likely to experience severe symptoms of COVID-19, they are less affected. Canada’s children and youth are not the generation that is most likely to fall ill from coronavirus, but they will carry its impacts the longest.²

Decisions made now in response to the COVID-19 crisis could have lifelong impacts on children and their rights. It is imperative that governments protect these rights at all times, but especially now during this time of crisis when they are most at risk. The purpose of this paper is twofold: (1) to provide an overview of the risks COVID-19 has posed on children’s rights and (2) to provide a basis for children’s human rights policy recommendations in response to COVID-19 and any future pandemics. Issues related physical and mental health, play, education, protection from maltreatment, online safety, liberty, and rights related to alternative care/custody issues have been consistently identified as areas of risk by leading national and international human rights organizations. Each will be discussed in this paper. While these risks could not always be neatly divided into the above categories, efforts were made to put the identified human rights issues in the most relevant sections. These sections are further divided into three subsections including: (1) an overview of the risks to the specific human right rising from the COVID-19 pandemic (2) an outline of governments’ obligations under human rights law to protect this right and (3) lists of relevant recommendations for policy makers on how to mitigate these risks. For ease of reference, many of these recommendations have been fully reproduced from their original source and are found in the shaded textboxes throughout this paper.

¹ UNICEF Canada “Canada’s Kids in Lockdown: Impact of the COVID-19 Pandemic on the Well-being of Children in Canada” (May 2020) at 1, online (pdf): [One Youth <oneyouth.unicef.ca/sites/default/files/2020-05/COVID19_RapidImpactAssessment_UNICEF%20Canada_May2020.pdf>](https://oneyouth.unicef.ca/sites/default/files/2020-05/COVID19_RapidImpactAssessment_UNICEF%20Canada_May2020.pdf).

² *Ibid.*

OVERVIEW OF HUMAN RIGHTS

International Law

The United Nations Convention on the Rights of the Child (UNCRC) is an internationally recognized treaty that outlines the human rights of children. Canada became a party to the UNCRC in December 1991 and thus has committed to uphold and protect the rights contained within it.³ While the UNCRC will be applied throughout this paper, there are a few provisions that are important to highlight initially as they will be relevant throughout the discussion that follows. First, children are protected from any form of discrimination from the State in the recognition of their UNCRC rights. According to UNCRC article 2, States must

respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child's or his or her parent's or legal guardian's race, colour, sex, language, religion, political or other opinion, natural, ethnic, or social origin, property, disability, birth or other status.⁴

Second, article 3 states that “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” [emphasis added].⁵ For any decisions to truly be in the “best interest of the child,” it is necessary that “the child's fundamental rights are recognized and respected at the same time”⁶

Third, States are required to respect the rights outlined in the UNCRC and must actively work to protect them. As mandated by article 4, States must “undertake all appropriate legislative, administrative, and other measures for the implementation of the rights recognized in the present Convention.”⁷ Fourth, Article 6 recognizes children's “inherent right to life” and requires that States “ensure to the maximum extent possible the survival and development of

³ *United Nations Convention of the Rights of the Child*, 28 May 1990, 1577 UNTS 3 (entered into force 2 September 1990, ratified by Canada 13 December 1991) [UNCRC].

⁴ *Ibid* at article 2.

⁵ UNCRC, *supra* note 3 article 3.

⁶ Jean-Francois Noel, “The Convention on the Rights of the Child” (accessed July 2020), online: *Government of Canada, Department of Justice* <www.justice.gc.ca/eng/rp-pr/fl-lf/divorce/crc-crde/conv2a.html>.

⁷ UNCRC, *supra* note 3 article 4.

the child.”⁸ Regarding this provision, UNCRC general comment 5 states that “The Committee expects States to interpret “development” in its broadest sense as a holistic concept, embracing the child’s physical, mental, spiritual, moral, psychological and social development. Implementation measures should be aimed at achieving the optimal development for all children.”⁹

Fifth, children have the right to have their voices heard. Article 12 mandates that “States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child.”¹⁰ Finally, under article 17 children have the right to “access information and material from a diversity of national and international sources, especially those aimed at the promotion of his or her social, spiritual and moral well-being and physical and mental health.”¹¹

Domestic Law

Children’s rights are also protected by Canadian law. Under section 7 of the *Canadian Charter of Rights and Freedoms*, “Everyone has the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice.”¹² Furthermore, section 15 of the *Charter* protects individuals’, including children’s, equality rights. This provisions states:

Every individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination and, in particular, without discrimination based on race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.¹³

⁸ *Ibid* at article 6.

⁹ UNCRC, 34th Sess, General comment No.5 (2003) General measures of implementation of the Convention on the Rights of the Child (arts 4, 42, and 44, para 6), UN Doc CRC/GC/2003/5 (adopted 27 November 2019) at 5.

¹⁰ UNCRC, *supra* note 3 article 12.

¹¹ UNCRC, *supra* note 3 article 17.

¹² *Canadian Charter of Rights and Freedoms*, Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982* (UK), 1982, c 11.

¹³ *Ibid*.

Children's rights have also been recognized in Canadian case law. In *Baker v Canada (Minister of Citizenship and Immigration)*, the Court said, "Children's rights and attention to their interests are central humanitarian and compassionate values in Canada society."¹⁴ Although this overview of human rights law is very brief, these principles will be relevant throughout the following discussion on children's human rights issues emerging from the COVID-19 pandemic.

¹⁴ *Baker v Canada (Minister of Citizenship and Immigration)*, 1999 CanLII 699 at para 67, 2 SCR 817.

HEALTH & WELLNESS

COVID-19's Impacts on Children's Physical Health

Health risks from COVID-19

The most obvious health concern arising from the COVID-19 pandemic is contracting COVID-19 itself. The range and degree of severity of symptoms experienced by those diagnosed with COVID-19 is wide. Some people who contract the virus may be asymptomatic while others might experience a new or worsening cough, shortness of breath, fever, fatigue, weakness, muscle or body aches, loss of smell or taste, and/or gastrointestinal symptoms. Symptoms more commonly experienced by children include abdominal symptoms and skin changes or rashes.¹⁵ The medical community's knowledge of COVID-19 is rapidly evolving and there is still much to be learned about this virus and how to treat it. Fortunately, early statistics show that only a minority of confirmed COVID-19 cases in developed countries include children and youth.¹⁶ While most children who contract COVID-19 display mild symptoms, there have been some cases where children have experienced extreme symptoms. These severe cases seem to be rare, however, as only 1% of all COVID-19 related hospitalizations in Canada are children or youth under the age of nineteen.¹⁷

Health risks not directly related to COVID-19

There are other children's health concerns arising from this health crisis that have been identified by the Canadian Paediatric Society besides those directly related to COVID-19. First, although a connection has not been definitely determined, the Canadian Pediatric Society has begun researching a possible correlation between COVID-19 and a recent surge in Kawasaki disease cases in children.¹⁸ Second, there is the issue of ensuring that children still have access

¹⁵ Government of Canada, "Coronavirus disease (COVID-19): Symptoms and treatment" (2020), online: *Government of Canada* <www.canada.ca/en/public-health/services/diseases/2019-novel-coronavirus-infection/symptoms.html>.

¹⁶ Nicole Le Saux, "Update on COVID-19 epidemiology and impact on medical care in children: April 2020." (29 April 2020) online: *Canadian Paediatric Society* <www.cps.ca/en/documents/position/update-on-covid-19-epidemiology-and-impact-on-medical-care-in-children-april-2020>.

¹⁷ *Ibid.*

¹⁸ UNICEF Canada and One Youth, *supra* note 1 at 4.

to regular health services. One of these regular services is routine immunizations and booster doses. It is important that children receive these immunizations within the appropriate time frame for optimal effectiveness. Without timely vaccinations, children may be at risk of contracting a serious illness or suffering life-threatening complications.¹⁹ However, because of reductions in public health services, children may not have full access to these immunizations. There is also the risk that this pandemic may place additional barriers to youth accessing sexual health services.²⁰ This could increase unplanned pregnancies or sexually transmitted infections. Another concern is that caregivers may avoid taking their child to the hospital for non-COVID-19 related emergencies out of fear of coming in contact with the virus. This may result in children not getting the medical care they need.²¹

Risks for newborns and expecting mothers

There are concerns for the health and well-being of newborns and expecting or breast-feeding mothers. These concerns arise because healthcare staff who usually provide support for these mothers and their newborns may be redeployed to other healthcare units to help care for COVID-19 patients. This may result in decreased breast-feeding rates and reduced prenatal care.²² There may also be a rise in postpartum depression cases for mothers giving birth during these stressful and uncertain times.²³ If not properly addressed, each of these concerns could have negative health impacts on children.

¹⁹ *Ibid* at 5.

²⁰ Human Rights Watch, "COVID-19 and Children's Rights" (9 April 2020) online: *Human Rights Watch* <www.hrw.org/news/2020/04/09/covid-19-and-childrens-rights#_Toc37256532>.

²¹ UNICEF Canada and One Youth, *supra* note 1 at 4.

²² *Ibid*.

²³ *Ibid*.

COVID-19's Impacts on Children's Mental Health

Higher rates of mental health issues since the beginning of the pandemic

Mental health challenges are already a struggle for many Canadian youth. One in three (34.2%) youth aged 11-15 report having frequent negative psychological health symptoms.²⁴ One in ten (10.5%) live with a mental health condition.²⁵ The COVID-19 pandemic may have harmful implications on mental health and could increase the number of children experiencing mental health challenges. Statistics Canada found that only 42% of youth aged 15 to 24 years old reported having very good or excellent mental health since the COVID-19 pandemic started. This rate is down from 62% of youth in the same age range reporting very good or excellent mental health in 2018.²⁶ Another Canadian survey found that 30% of youth polled reported an increase in stress and/or anxiety because of COVID-19.²⁷ Similarly, a separate survey found that 24% of parents of youth aged 18 years and under reported that their child's mental health had worsened since the beginning of the pandemic.²⁸

Factors contributing to higher rates of mental health issues

There are several reasons why this pandemic may cause a decline in children's mental health. Children may fear losing a loved one to COVID-19 or worry about getting the virus themselves. Quarantine and isolation measures may have negative impacts on children's mental health. Studies of previous pandemics have showed that nearly one-third of children who were isolated or quarantined had symptoms that were consistent with a PTSD diagnosis.²⁹ These

²⁴ UNICEF Canada, "The Canadian Index of Child and Youth Well-being 2019 Baseline Report" (2019) at 50, online (pdf): [UNICEF Canada <oneyouth.unicef.ca/sites/default/files/2019-08/2019_Baseline_Report_Canadian_Index_of_Child_and_Youth_Well-being.pdf>](https://www.unicef.ca/sites/default/files/2019-08/2019_Baseline_Report_Canadian_Index_of_Child_and_Youth_Well-being.pdf). [Canadian Index].

²⁵ *Ibid.*

²⁶ Leanne Findlay and Rubab Arim, "Canadians report lower self-perceived mental health during the COVID-19 pandemic" (24 April 2020) online: [Statistics Canada <www150.statcan.gc.ca/n1/pub/45-28-0001/2020001/article/00003-eng.htm>](https://www150.statcan.gc.ca/n1/pub/45-28-0001/2020001/article/00003-eng.htm).

²⁷ One Youth, "What U-Reporters Are Saying, U-Report Results" (2020) online: [One Youth <oneyouth.unicef.ca/en/u-report-results>](https://oneyouth.unicef.ca/en/u-report-results).

²⁸ Canadian Mental Health Association, "COVID-19 effects on the mental health of vulnerable populations" (2020) online (pdf): [Canadian Mental Health Association <cmha.ca/wp-content/uploads/2020/06/EN_UBC-CMHA-COVID19-Report-FINAL.pdf>](https://cmha.ca/wp-content/uploads/2020/06/EN_UBC-CMHA-COVID19-Report-FINAL.pdf).

²⁹ Ginny Sprang & Miriam Silman, "Posttraumatic Stress Disorder in Parents and Youth After Health-Related Disasters" (2013) 7 *Disaster Medicine and Public Health Preparedness* at 108-109.

measures could result in a child's separation from grandparents, extended family members and friends which might cause feelings of loneliness. The disruption in their daily routines such as attending school and participating in extracurricular activities can cause feelings of uncertainty and loss of control. These are isolating experiences that could increase a child's stress and anxiety levels. Children who already have pre-existing mental health conditions may be particularly vulnerable to these effects.³⁰ This crisis may intensify their negative emotions, increase feelings of physical discomfort, or cause them to engage in avoidance or compulsive behaviours.³¹ In extreme cases, high stress levels may hinder a child's cognitive development and trigger longer-term mental health challenges.³²

Decreased access to mental health services and resources

Although there are factors for children to experience an increase in mental health issues during this pandemic, they may have a decreased chance of getting the help they need. Lockdown measures may limit children's access to mental health services, especially if children accessed them primarily through school and other community services.³³ Some services may still be available online or by phone, however this adjustment may be difficult one for youth. They may find these methods to be inferior to in-person sessions. They may also worry about how privacy and confidentiality can be maintained through these methods.³⁴ Additionally, while there is a wealth of information being produced for mental health care awareness for the general population, the Mental Health Commission of Canada notes its concern that this information may not be communicated to or appropriate for vulnerable population groups. Children are one of

³⁰ Alliance for Child Protection in Humanitarian Action, "Technical Note: Protection of Children during the Coronavirus Pandemic (v.1)" (May 2020) at 1, online(pdf): *UNICEF* <[unicef.org/media/65991/file/Technical%20note:%20Protection%20of%20children%20during%20the%20coronavirus%20disease%202019%20\(COVID-19\)%20pandemic.pdf](https://www.unicef.org/media/65991/file/Technical%20note:%20Protection%20of%20children%20during%20the%20coronavirus%20disease%202019%20(COVID-19)%20pandemic.pdf)>.

³¹ Nicola Keyhan, "Supporting youth with anxiety disorders during COVID-19 pandemic." (2 April 2020) online: *Canadian Paediatric Society* <www.cps.ca/en/blog-blogue/supporting-youth-with-anxiety-disorders-during-the-covid-19-pandemic>.

³² UN, "Policy Brief: The Impact of COVID-19 on children" (15 April 2020) at 9, online (pdf): *United Nations* <[un.org/sites/un2.un.org/files/policy_brief_on_covid_impact_on_children_16_april_2020.pdf](https://www.un.org/sites/un2.un.org/files/policy_brief_on_covid_impact_on_children_16_april_2020.pdf)>.

³³ UNICEF Canada and One Youth, *supra* note 1 at 4.

³⁴ *Ibid* at 5.

these vulnerable groups.³⁵ Without proper access to this information, children and youth may be deprived of valuable resources on how to cope with their mental health challenges during this pandemic.

Impacts on Indigenous Children's Health

Indigenous children may face unique health risks related to COVID-19. Socioeconomic disadvantages they already face may be heightened in the midst of this pandemic. For example, indigenous peoples are more likely to have pre-existing medical conditions which may make them more vulnerable to the virus.³⁶ Their communities often lack access to resources such as housing, clean water, food security, healthcare and social programs. This is particularly true for remote indigenous communities. In addition, safety measures to halt the spread of the virus may disrupt cultural practices that are closely associated with wellness that could further put their health at risk.³⁷

Indigenous children are also particularly vulnerable to the mental health risks associated with COVID-19, especially isolation and decreased access to resources as these are struggles that many indigenous youth already face. Prior to this pandemic, only 55.5% of First Nations youth report having excellent or good mental health.³⁸ Suicide is the leading cause of death for indigenous youth aged 10-29 years – this is five to seven times higher than suicide rates for non-indigenous youth.³⁹ Since the beginning of this pandemic, Canadian mental health hotlines

³⁵ Mental Health Commission of Canada, "COVID-19 and Mental Health: Policy Responses and Emerging Issues, Preliminary Scan" (2020) at 2, online: *Mental Health Commission* (pdf): <mentalhealthcommission.ca/sites/default/files/2020-06/COVID_19_policy_responses_emerging_issues_eng.pdf>.

³⁶ Canadian Paediatric Society, "COVID-19 and Indigenous children in Canada: What can paediatricians do?" (27 May 2020) online: *Canadian Paediatric Society* <cps.ca/en/blog-blogue/covid-19-indigenous-children-in-canada-what-can-paediatricians-do>.

³⁷ *Ibid.*

³⁸ John Elflein, "Indigenous health in Canada – Statistics & Facts" (8 May 2020), *Statista* <www.statista.com/topics/4563/indigenous-health-in-canada/>.

³⁹ Maryssa Barras, "A Statistical Report on the State of Indigenous Mental Health in Canada" (14 November 2018), online: *Amnesty International University of Toronto* <amnesty.sa.utoronto.ca/2018/11/14/a-statistical-report-on-the-state-of-indigenous-mental-health-in-canada/>.

serving indigenous youth have seen calls at four times the average rate which could be indicative of worsening mental health conditions.⁴⁰

Health as a Human Right

Article 24 of the UNCRC recognizes children’s right to health. This provision states:

1. States Parties recognize the right of the child to the enjoyment of the highest attainable standard of health and to facilities for the treatment of illness and rehabilitation of health. States Parties shall strive to ensure that no child is deprived of his or her right of access to such health care services.
2. States Parties shall pursue full implementation of this right and, in particular, shall take appropriate measures:
 - (a) To diminish infant and child mortality;
 - (b) To ensure the provision of necessary medical assistance and health care to all children with emphasis on the development of primary health care;
 - (c) To combat disease and malnutrition, including within the framework of primary health care, through, inter alia, the application of readily available technology and through the provision of adequate nutritious foods and clean drinking-water, taking into consideration the dangers and risks of environmental pollution;
 - (d) To ensure appropriate pre-natal and post-natal health care for mothers;
 - (e) To ensure that all segments of society, in particular parents and children, are informed, have access to education and are supported in the use of basic knowledge of child health and nutrition, the advantages of breastfeeding, hygiene and environmental sanitation and the prevention of accidents;
 - (f) To develop preventive health care, guidance for parents and family planning education and services.

...⁴¹

As stated above, States have the obligation to strive to ensure that children’s access to healthcare services is not deprived and to “pursue full implementation of this right.” Although the chances of children being hospitalized for COVID-19 are minimal, it is critical that States

⁴⁰ Paula Newton, “Coronavirus accelerates a mental-health crisis for Canada’s indigenous youth” (16 August 2020) online: *CNN* <www.cnn.com/2020/08/16/americas/canada-indigenous-youth-mental-health-intl/index.html>.

⁴¹ UNCRC, *supra* note 3 article 24.

uphold children's UNCRC article 24 rights to the "highest attainable standard of health" and to access medical care and facilities necessary to treat COVID-19. This includes ensuring children have access to COVID-19 testing and a vaccine when one becomes available.

The Committee on the Rights of the Child stresses that despite the strain on health care services and its potentially limited availability during this crisis, children's health concerns must remain a priority, including those not directly related to COVID-19.⁴² It is imperative that children and youth continue to have access to regular services during the pandemic such as immunizations, sexual health services, mental health care, and child-friendly healthcare information. These responsibilities placed on States by article 24 are further reinforced when considering them alongside States' obligations to make decisions in the best interest of the child (UNCRC article 3), and to protect children's right to life (UNCRC article 6; *Canadian Charter of Rights and Freedoms* section 7), and to ensure children have access to information that promotes their health and well-being (UNCRC article 17).

Furthermore, the UNCRC requires that States "ensure that children's health is not undermined as a result of discrimination."⁴³ UNCRC article 2 lists the grounds of discrimination from which children are protected which includes "the child's or his or her parent's or legal guardian's race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status." Sexual orientation, gender identity and health status and mental health are also included in the grounds that are protected from discrimination.⁴⁴ Under this mandate, Indigenous children, children with underlying health issues (including mental health), disabled children and other children particularly vulnerable during the COVID-19 crisis must have equal access to healthcare services despite the difficulties presented

⁴² Committee on the Rights of the Child, "The Committee on the Rights of the Child warns of the grave physical, emotional and psychological effect of the COVID-19 pandemic on children and calls on States to protect the rights of children" (2020) at 2, online: *United Nations Human Rights* <tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=INT/CRC/STA/9095&Lang=en>.

⁴³ UNCRC, 66th Sess, General comment No.15 (2013) on the right of the child to the enjoyment of the highest attainable standard of health (art.24), UN Doc CRC/C/GC/15 (17 April 2013) at 4.

⁴⁴ *Ibid* at 4-5.

by this pandemic. Recommendations to governments from leading health and human rights organizations on how to ensure children’s right to health is respected are listed in the following sections.

Recommendations

*Recommendations from Canadian Paediatric Society*⁴⁵

- Provide funding for sufficient hygiene supplies, procedures and information for public places that remain open during the pandemic, and for places where children gather including schools, day cares, recreation centres, youth shelters and group homes as spaces re-open.
- Provide guidance to parents for monitoring children’s health, keeping them home from school (where applicable) and practicing effective social distancing.
- Support children to cope with stress and anxiety by providing appropriate, targeted information and resources for parents and young people of different age groups.
- Support partners to provide additional staff and programming for family and child help lines.
- Provide appropriate and regular information to youth, encouraging children to ask questions and express their concerns. Having information and facts about COVID-19 will help diminish fears and anxieties around the disease and increase resilience and ability to cope with secondary impacts.
- Provide psychosocial support to those affected, which may include additional staffing of school support workers, particularly in the weeks following schools re-opening.
- Provide funding for alternative solutions for children who rely on school lunches and meals provided by other community programs.
- Help ensure the orderly transport of sufficient food to small and remote communities and in urban “food deserts”, which can severely affect children in these communities.
- Provide emergency funds to support youth-friendly shelters and community resources for those in need of a safe space or at heightened risk of exploitation or other harm.
- Prioritize the safety and reunification of parents and children and apply any quarantines with specific measures to avoid or minimize the length of family separation, and provide safe alternatives for children. Children may be separated from family members due to hospitalization, border/travel restrictions or medical isolation/quarantine of parents, presenting protection and mental and physical health risks to children.
- Provide emergency income support and use every means available to incentivize employers to protect workers’ employment, including youth employees. Many families with children have insecure or irregular employment. The loss of income and jobs will severely affect many aspects of children’s lives, including nutrition, health, housing and safety.

⁴⁵ Letter from Dr. Ellen Wood, Canadian Paediatric Society President to Bill Morneau, Minister of Finance, Patty Hajdu, Minister of Health, and Ahmed Hussen, Minister of Families, Children and Social Development, (20 March 2020) online (pdf): *Canadian Paediatric Society* <cps.ca/uploads/advocacy/Protecting_children_during_COVID19.pdf>.

- Continue to provide accurate information through effective channels about how adults and children can keep themselves and others safe, avoid discrimination, and support parents and children in their communities particularly during school closures and other service or program shutdowns. Misinformation during times of a health crisis can spread paranoia, fear, and stigmatization. It can also result in people being left unprotected or more vulnerable to the virus.

*Recommendations from UNICEF*⁴⁶

- Advocate for vulnerable children and their families' free access to healthcare (if it is not universal)
- Collaborate to include CP [child protection] concerns in health sector assessment and monitoring tools.
- Develop common standard procedures for documenting and referring children's cases between CP and health services to ensure children receive safe, appropriate, family-based care if separated.
- Advocate for clear and child-friendly intake and discharge procedures to promote family unity and reduce the risk of separations.
- Facilitate safe and regular communication between children and parents/caregivers who are temporarily separated.
- Collaborate to ensure child-friendly health facilities/access to health care, including guidance for health staff on child-friendly communication and special measures to support children's psychosocial well-being when undergoing treatment and quarantine.
- Support child safeguarding training for health workers (particularly where children are separated from their families or caregivers).
- Establish safe, child-friendly complaints and feedback mechanisms in health care facilities.
- Collaborate on mental health and psychosocial support (MHPSS) care and messaging for children and caregivers affected by COVID-19.
- Include measures to protect children during a COVID-19 outbreak in contingency plans.
- Ensure that information, education and communication (IEC) materials, including information on available services, are produced and displayed with limited text in child-friendly versions.

*Recommendations from Human Rights Watch*⁴⁷

- Governments should minimize disruptions in children's access to essential and life-saving basic healthcare services for issues unrelated to COVID-19.

⁴⁶ Alliance for Child Protection in Humanitarian Action, *supra* note 30 at 3.

⁴⁷ Human Rights Watch, *supra* note 20.

- Governments should create long-term plans to deliver immunizations in the aftermath of the pandemic and identify children who missed doses of vaccines due to disruptions in health services.
- Governments should ensure access to mental health and psychological support services for children and adolescents, during the pandemic and afterward.
- Governments should closely monitor and work to mitigate the impacts of COVID-19 on sexual and reproductive health services, particularly for adolescents and young people who already face unique barriers to care.
- Government education and health ministries should ensure comprehensive sexuality education is included in online and distance learning measures implemented during school closures.
- Governments should create new resources online to provide child-friendly sexual and reproductive health information, including about how to access services during the COVID-19 crisis.
- Governments should continue, and expand as needed to meet demand, support for hotlines assisting people with questions about pregnancy, abortion, and sexual and reproductive health, and ensure that these services assist and reach out to children.
- Governments should ensure safe abortion is regarded as essential health care and accessible even when emergency measures mandate delaying some forms of health care.
- Governments should facilitate full access to safe medical abortion at home, including lifting any regulatory barriers to the teleconsultations and access to medications needed for medical abortion at home.
- Governments should ensure pregnant adolescents can have a trusted companion present during childbirth, and any restrictions required by public health concerns are implemented in the least restrictive way and to minimize the rights impact; include the adolescent's participation to develop alternatives that ensure the safety and well-being of all patients.
- Over the long term, governments should remove requirements for parental involvement in sexual and reproductive health services, including abortion, as these requirements can be barriers to care.

Play

The Committee on the Rights of the Child defines “play” as “any behaviour, activity or process initiated, controlled and structured by children themselves; it takes place whenever or wherever opportunities arise.”⁴⁸ “Recreational activities” is defined as “an umbrella term used to describe a very broad range of activities, including, inter alia, participation in music, art, crafts, community engagement, clubs, sports, games, hiking and camping, pursuing for hobbies.”⁴⁹ By their very definitions, play and recreational activities are broad terms that incorporate a wide variety of activities. Since sports are included under the umbrella of recreational activities protected by UNCRC article 31, they will be included in this discussion of the right play.

Play is essential to children’s well-being

Play is a critical component of children’s health and well-being.⁵⁰ The Canadian Coalition for the Rights of Children and International Play Association–Canada recognize that “[p]lay is fundamental to quality childhood and optimal development.”⁵¹ Similarly, the UN Committee on the Rights of the Child states that “[p]lay and recreation are essential to the health and well-being of children and promote the development of creativity, imagination, self-confidence, self-efficacy, as well as physical, social, cognitive and emotional strength and skills.”⁵²

Since exercise quite naturally coincides with play and recreational activities, it will also be included under the umbrella of “play.” When children play, they often run, jump, skip climb and are otherwise physically active. This physical activity is critical to children’s overall health and its benefits are extensive and well-documented in scientific research. Higher rates of physical activity are correlated to a wide variety of health benefits including increased physical fitness,

⁴⁸ UNCRC, 62nd Sess, General comment No. 17 (2013) on the right of the child to rest, leisure, play, recreational activities, cultural life and the arts (art. 31), UN Doc CRC/C/GC/17 (17 April 2013) at 5.

⁴⁹ *Ibid.*

⁵⁰ Janes Hewes, “Seeking Balance in Motion: The Role of Spontaneous Free Play in Promoting Social and Emotional Health in Early Childhood Care and Education” (1 October 2014) *Children* 2014 1(3) 280-301.

⁵¹ Canadian Coalition for the Rights of Children & International Play Association – Canada, “Right to Play: A fundamental necessity for healthy development!” (December 2019) at 1 online (pdf): IPACanada.org/docs/RightToPlay.pdf.

⁵² UNCRC, General comment No. 17 *supra* note 48 at 4.

motor competence, healthy weight levels, metabolic health, bone health, academic achievement, mental health and brain functioning, among others.⁵³

Recommended hours of physical activity per day

The Canadian Society for Exercise Physiology (CSEP) recommends that children aged 1-4 years spend at least 180 minutes a day participating in physical activities, including “energetic play.”⁵⁴ For children and youth aged 5-17 years, CSEP recommends they get at least 60 minutes a day of “moderate to vigorous physical activity” in addition to “several hours of a variety of structured and unstructured light physical activities.”⁵⁵ These recommended hours of physical activity are often spent doing organized or school-related activities such as walking to and from school, participating in gym class, playing during recess, playing organized sports or participating in other physical extracurriculars such as dance class. Data gathered by Statistics Canada shows that most weekday physical activity in children aged 5-11 years was related to school or team sports. More specifically, 37% of weekly activity was during free time at school, 20% during class time, and 15% during lessons, league or team sports. Youth aged 12-17 years also showed high statistics. In this age bracket, 21% of weekday physical active was spent during active transportation, 33% doing school-based physical activity, and 43% participating in sports. In summary, 72% of weekday activity in children aged 5-11 years and 97% in children and youth aged 12-17 years involved school or organized sports.⁵⁶

⁵³ ParticipACTION, “The Brain + Body Equation: Canadian kids need active bodies to build their best brains. The 2018 ParticipACTION Report Card on Physical Activity for Children and Youth” (2018) at 6 online (pdf): *ParticipACTION* <participaction.cdn.prismic.io/participaction%2F38570bed-b325-4fc8-8855-f15c9aebac12_2018_participaction_report_card_-_full_report_0.pdf>.

⁵⁴ Canadian Society for Exercise Physiology, “Canadian 24-Hour Movement Guidelines For The Early Years (0-4 years): An Integration of Physical Activity, Sedentary Behaviour, and Sleep” (no date) at 1-2 online (pdf): *Canadian Society for Exercise Physiology* <csepguidelines.ca/wp-content/themes/csep2017/pdf/PAR7972_24Hour_Guidelines_EY_En-4.pdf>.

⁵⁵ Canadian Society for Exercise Physiology, “Canadian 24-Hour Movement Guidelines For Children and Youth: An Integration of Physical Activity, Sedentary Behaviour, and Sleep” (no date) at 1-2 online (pdf): *Canadian Society for Exercise Physiology* <csepguidelines.ca/wp-content/themes/csep2017/pdf/Canadian24HourMovementGuidelines2016_2.pdf>.

⁵⁶ ParticipACTION, *supra* note 53 at 27-28.

COVID-19's Impacts on Play

Lockdown measures restrict opportunities for play

The safety measures put in place to prevent the spread of COVID-19 have been restrictive on children to fully enjoy their right to play. As discussed above, most of children's weekly physical activity occurs at school or through organized sports and activities. Since schools have been closed and many nonessential activities cancelled, children's play and physical activity associated with these has likely declined or stopped altogether.⁵⁷ It is also important to note that lockdown measures may be particularly damaging to Indigenous children. They are more likely to have less access to organized sports and other physical activity programming due to lack of funding and/or the remoteness of their communities at the best of times.⁵⁸ The COVID-19 crisis may exacerbate these disadvantages and place additional barriers on their right to play.

Furthermore, many parks and playgrounds across New Brunswick have been closed which has placed additional limitations on children's outlets to play.⁵⁹ Because of limitations placed on safe spaces for play like playgrounds and indoor recreational centers, there is concern that children will take their play to the streets. This is especially concerning for children living in urban centers as this raises the risk of children playing in dangerous and/or high traffic areas.⁶⁰ Another concern is that social distancing measures may also restrict opportunities to have play dates with other children.⁶¹

⁵⁷ Hongyan Guan et al, "Promoting health movement behaviours among children during the COVID-19 pandemic" (29 April 2020) online (pdf): *The Lancet* volume 4 <[www.thelancet.com/pdfs/journals/lanchi/PIIS2352-4642\(20\)30131-0.pdf](http://www.thelancet.com/pdfs/journals/lanchi/PIIS2352-4642(20)30131-0.pdf)>.

⁵⁸ ParticipACTION, *supra* note 53 at 30.

⁵⁹ Jordan Gill, "Chief medical officer says park use during outbreak OK, with precautions" (24 March 2020) online: *CBC* <cbc.ca/news/canada/new-brunswick/province-park-covid-19-1.5508673>.

⁶⁰ Alden, Christine, "Coronavirus spotlights equity and access issues with children's right to play" (6 May 2020), online: *The Conversation* <theconversation.com/coronavirus-spotlights-equity-and-access-issues-with-childrens-right-to-play-137187>.

⁶¹ International Play Association Canada, "Statement: Play in the time of COVID-19" (25 March 2020), online: *IPA Canada* <ipacanada.org/covid-19/statement-play-in-the-time-of-covid-19/>.

Loss of therapeutic benefits of play

If children do not have the opportunity to play, there is the risk that children will lose the therapeutic benefits of play. Play is especially important during times of crisis as children may use this to cope with their anxieties or manage their emotions.⁶² When children do not have daily opportunities for play, their overall development can be hindered and their negative emotional responses can increase. Without sufficient outlets for play and recreation, children's health could be jeopardized.⁶³ Because of the extra anxieties and stressors associated with COVID-19, it is important that children continue to have access to play as a coping mechanism to deal with the struggles that this pandemic may bring.

Play as a Human Right

Children's right to play and participate in recreational activities is recognized as a human right in UNCRC article 31 which states:

1. States Parties recognize the right of the child to rest and leisure, to engage in play and recreational activities appropriate to the age of the child and to participate freely in cultural life and the arts.
2. States Parties shall respect and promote the right of the child to participate fully in cultural and artistic life and shall encourage the provision of appropriate and equal opportunities for cultural, artistic, recreational and leisure activity.⁶⁴

CRC general comment 17 elaborates on article 31 and imposes the following obligations on States to ensure this right is upheld:

- (a) The obligation **to respect** requires States parties to refrain from interfering directly or indirectly, in the enjoyment of the rights provided for in article 31;
- (b) The obligation **to protect** requires States parties to take steps to prevent third parties from interfering in the rights under article 31;
- (c) The obligation **to fulfill** requires States parties to introduce the necessary legislative, administrative, judicial, budgetary, promotional and other measures aimed at facilitating the full enjoyment of the rights provided for in

⁶² *Ibid.*

⁶³ International Play Association, "Access to Play for Children in Situations of Crisis, Play: rights and practice, A toolkit for staff, managers and policy makers," (2017) at 4, online (pdf): *International Play Association* <ipaworld.org/wp-content/uploads/2017/07/IPA-A4-ACCESS-TO-PLAY-IN-SITUATIONS-OF-CRISIS-TOOLKIT-LR.pdf>.

⁶⁴ UNCRC, *supra* note 3 article 31.

article 31 by undertaking action to make available all necessary services, provision and opportunities.⁶⁵

Under article 31, governments are required to protect and promote children's right to play. They are also prohibited from interfering with the right to play. Although government lockdown measures are purposed to protect children's health, they have simultaneously interfered with children's article 31 rights. The Committee on the Rights of the Child recognizes the challenges associated with balancing risk and safety in realizing children's right to play. The risks associated with allowing social play and public areas for play such as playgrounds to remain open must be balanced against protecting children's health. However, as discussed above, play is a critical component to children's health. Since play and physical activity is strongly associated with overall health, it is important that this is not compromised in the midst of a health crisis. General comment 17 says "[w]hile play is often considered non-essential, the Committee reaffirms that it is a fundamental and vital dimension of the pleasure of childhood, as well as an essential component of physical, social, cognitive, emotional and spiritual development."⁶⁶ This comment reiterates that the right to play is not optional. It is essential. Governments must give this right the respect, protection, and fulfillment that the UNCRC requires while also ensuring that children are kept safe.

It is also important to note that general comment 17 calls for special attention to be given to vulnerable children to ensure their right to play is protected. Children who are vulnerable include girls, children living in poverty, children with disabilities, children in institutions (including hospitals, detention centers and residential homes), and indigenous and minority children.⁶⁷ Since these children might face additional barriers to their right to play, governments must give extra consideration to how restrictions might impede on this right. Finally, the UNCRC requires that States consider the best interest of the child (article 3) and children's right to the highest standard of health (article 24). In situations like these when risk and safety must be balanced in recognizing the right to play, the "best interests of the child and listening to children's

⁶⁵ UNCRC General comment No. 17, *supra* note 48 at 17.

⁶⁶ *Ibid* at 4.

⁶⁷ *Ibid* at 15-17.

experiences and concerns should be mediating principles for determining the level of risk to which children can be exposed.”⁶⁸ However, there is concern that this right is not being considered in governments’ responses to COVID-19 which is contrary to States’ obligations under the UNCRC.⁶⁹ There is very little information available from governments in their formal responses to COVID-19 that indicates that the right to play is being given considering in decision-making processes. Recommendations on how governments might integrate play in their formal COVID-19 response policies are listed below.

Recommendations

Recommendations to Protect the Right to Play during COVID-19 Pandemic

The Canadian Coalition for the Rights of Children recommends that making safe play a priority for governments.⁷⁰ Similarly, the Canadian branch of the International Play Association advocates that play be incorporated into the changes to daily life that COVID-19 has brought.⁷¹ Further recommendations from human rights groups, professionals and governments are outlined below.

Recommendations from International Play Association ⁷²

Prior to the current COVID-19 pandemic, the International Play Association developed a support plan to promote children’s right to play in crisis situations. The following considerations were suggested to “ensure protection, participation and provision of play in situations of crisis”:

- Play is a fundamental part of childhood
- Children’s play is essential for healthy development and wellbeing
- It is a legitimate behaviour and a human right of all children
- In situations of conflict or disaster, opportunities for play have a significant therapeutic and rehabilitative role in helping children recover a sense of normality and joy after their experience of loss, dislocation and trauma
- Children’s play spaces are important environments that should be protected and cared for

⁶⁸ *Ibid* at 12.

⁶⁹ Christine McLean, “Let the children play: 4 reasons why play is vital during the coronavirus” (12 April 2020) online: *The Conversation – Canada* <theconversation.com/let-the-children-play-4-reasons-why-play-is-vital-during-the-coronavirus-135751>.

⁷⁰ Kathy Vandergrift, “Covid-19: Re-opening for Children: Short-term Actions and System Change” (29 April 2020) online: *Canadian Coalition for the Rights of Children* <rightsofchildren.ca/childrens-rights-in-canada/covid-19-re-opening-for-children-short-term-actions-and-system-change/>.

⁷¹ International Play Association Canada, “Statement: Play in the Time of COVID-19,” *supra* note 61.

⁷² International Play Association Canada, “Access to Play for Children in Situations of Crisis,” *supra* note 63 at 4.

- We need to understand that children’s idea of a desirable place to play may differ from that of an adult
- Adults should listen to what children say about playing and genuinely value their contributions
- We should protect children’s time to play freely
- Agencies can support children by recognising the value playing brings to children’s life experience and sharing that knowledge with others.

Recommendations from Child Psychologists ⁷³

- That, once it is safe to do so, the loosening of lockdown is done in a way that allows children to play with their peers as soon as possible.
- That public health messages to families and education staff provide clear information on the social and emotional benefits of play, including outdoor play, and clear guidance on the objective risks to children.
- That decision-makers take a risk-benefit approach when making decisions about children’s interaction and play in schools.
- That all children are given time at school to play with their peers, even while social distancing remains unnecessary.
- That schools are appropriately resourced to support children’s emotional wellbeing, especially during the transition period when social distancing measures are still in place.
- That in the short term, schools should be guided to focus on encouraging play and supporting children’s social and emotional wellbeing. There should be less focus on educational attainment.
- That playing and learning outdoors should be recommended where schools have the facilities.
- That where necessary, individual plans for transitioning children back to school should be developed in partnership with families.

Guidelines from the Government of Alberta for Playground Safety ⁷⁴

The following recommendations were given by the government of Alberta regarding safe playground use. These recommendations are the most comprehensive found from any provincial government on this matter.

- Those who are sick or have symptoms related to COVID-19 must not use playgrounds.

⁷³ Sam Cartwright-Hatton et al, “Play First: Supporting Children’s Social and Emotional Wellbeing During and After Lockdown” (13 May 2020) online: *Outdoor Play Canada* <outdoorplaycanada.ca/2020/05/13/play-first-supporting-childrens-social-and-emotional-wellbeing-during-and-after-lockdown/>.

⁷⁴ Government of Alberta, “Covid-19 Information: Guidance for Playgrounds” (16 May 2020) at 1-2 online (pdf): *Alberta Government* <open.alberta.ca/dataset/b09f113e-32bb-42d2-9ba3-29b76dcfd36f/resource/3cfefaf1-f465-489e-af0c-6f62bf2a644d/download/covid-19-relaunch-guidance-playgrounds.pdf>.

- Encourage children to avoid sharing toys or sports equipment and limit contact with individuals outside of their household or cohort family.
- Clean and disinfect toys and sports equipment prior to and after use.
- Caution should be taken around playground equipment.
- Practice proper hand hygiene.
- Wash your hands frequently.
- Refrain from touching your face with unclean hands.
- Carry and use hand sanitizer containing at least 60% alcohol content immediately before and after using playground equipment.
- Consider limiting children and other members of your household to only visiting playgrounds that are close to your home. This will help limit the number of people your family may come into contact with.
- Maintain physical distancing and limit congregating with other people when entering and leaving the playground and supervising children playing (e.g. paths, benches, picnic areas).
- Individuals should maintain physical distancing when returning to vehicles or homes.
- Drinking water fountains should be shut off.
- Ensure garbage bins with removable linings are available. Consider checking these frequently.
- Signage should be posted to remind users of gathering restrictions and physical distancing requirements.
- Consider limiting access to playgrounds to those who live in the immediate neighbourhood.
- Consider limiting capacity at playgrounds to allow for 2-metre distancing. Post signs to remind users of capacity restrictions.

EDUCATION

COVID-19's Impacts on Education

Effects on academic achievement

School closures and the switch to online learning have been widespread since the beginning of this pandemic. While there is uncertainty on whether virtual teaching is as effective as learning from in-person instruction, there is no doubt that academic performance will worsen for at least some students.⁷⁵ As a result, these students may fail to meet expected academic outcomes. Not only could students fail to meet outcomes, they could also lose knowledge and skills they already have because of the length of time since they were in school. Students can typically be expected to experience learning losses during a prolonged absence from school such as that of a typical summer break period. In some cases, these losses may be significant⁷⁶ Losses due to absence from school are generally higher than losses from summer vacation.⁷⁷ Since many students have not been in a normal classroom setting since March, it could be expected that this learning loss may be even greater than that of a typical summer. Estimating these losses is a difficult task because of the unprecedented nature of this pandemic. However, one study has projected that students returning to school in the fall of 2020 might have substantial loss of skills acquired the previous year. Although these figures do not account for homeschooling or online instruction that students may have had, this study shows that students might have only retained 63-68% of their reading skills gains and 37-50% of their math skill gains.⁷⁸ These numbers could be even higher for minorities and children from low-income families.⁷⁹

⁷⁵ Susanna Loeb, "How Effective Is Online Learning? What the Research Does and Doesn't Tell Us" (20 March 2020) online: *Education Week* <www.edweek.org/ew/articles/2020/03/23/how-effective-is-online-learning-what-the.html>.

⁷⁶ Matthias Doepke & Fabrizio Zilibotti, "COVID-19 and Children's Education" (01 April 2020), online: *Psychology Today* <psychologytoday.com/ca/blog/love-money-and-parenting/202004/covid-19-and-children-s-education>.

⁷⁷ Megan Kuhfeld, et al, "Protecting the potential impacts of COVID-19 school closures on academic achievement" (May 2020) Brown University, Working Paper No 20-226, at 8 <www.edworkingpapers.com/sites/default/files/ai20-226-v2.pdf>.

⁷⁸ *Ibid* at 28.

⁷⁹ *Ibid* at 25.

These losses could worsen an already existing problem. Before the COVID-19 pandemic, twenty percent of Canadian children do not achieve basic proficiency in reading, math and science.⁸⁰ Six percent of youth aged 15-19 years are not in school or working.⁸¹ If shutdown measures are continued, there is a risk that these gaps may widen. The longer schools are closed and the greater the economic strain becomes, the greater the likelihood that students will drop out of school or fall behind in their learning.⁸²

Additional burdens placed on children already facing barriers to education

The changes brought on by COVID-19 have resulted in challenging adjustments for every child. However, these challenges may be even greater for those children who are already face additional barriers. For example, children with disabilities and special needs may no longer have access to additional support services that come with in-person instruction. In New Brunswick, 13% of students in grades K-5⁸³ and 27% of students in grades 6-12 have a learning exceptionality or special education need.⁸⁴ Children living in rural communities and/or from low-income families might not have access to the resources they need to learn such as reliable internet access and an adequate space to study as they try to learn from home.⁸⁵ Children living with parents who do not speak French or English might be at a disadvantage as they try to navigate their schoolwork at home on their own.⁸⁶ Indigenous children already face barriers to academic achievement and have lower graduation rates than non-indigenous youth.⁸⁷ The transition to

⁸⁰ UNICEF Canada, "Canadian Index," *supra* note 24 at 46.

⁸¹ UNICEF Canada and One Youth, *supra* note 1 at 2.

⁸² *Ibid* at 12.

⁸³ New Brunswick Health Council, "New Brunswick Elementary Student Wellness Survey Grades K-5" (2016-2017) at 12, online (pdf): *Canadian School Boards Association* <nbhc.ca/sites/default/files/publications-attachments/Elementary%20Student%20Wellness%20Survey%202016-2017%20-%20All%20provincial%20results.pdf>.

⁸⁴ New Brunswick Health Council, "New Brunswick Wellness Survey Grades 6-12" (2018-2019) at 11, online (pdf): *New Brunswick Health Council* <nbhc.ca/sites/default/files/publications-attachments/SWS18-19%20-New%20Brunswick%20Provincial%20Results.pdf>.

⁸⁵ UNICEF Canada and One Youth, *supra* note 1 at 8.

⁸⁶ Matthias Doepke & Fabrizio Zilibotti, "COVID-19 and Children's Education" (01 April 2020) online: *Psychology Today* <psychologytoday.com/ca/blog/love-money-and-parenting/202004/covid-19-and-children-s-education>.

⁸⁷ Valerie Campbell, "How can we create conditions for Aboriginal student success in our public schools?" (June 2014) at 1, online (pdf): *Canadian School Boards Association* <cdnsba.org/wp-content/uploads/2014/06/FOE-5.pdf>.

online learning for these students presents unique challenges that may negatively impact their learning and/or create additional barriers to their education.

Effects on overall well-being and inclusion

In addition to the effects on learning, prolonged school closures may negatively impact other aspects of children's well-being. School closures may limit their development of non-cognitive skills such as patience, perseverance and learning the consequences of one's actions. This could increase children's stress, anxiety, and social exclusion.⁸⁸ Prior to COVID-19, feelings of school connectedness among New Brunswick students were high, particularly for older students. Ninety-two percent (92%) of students in grades 6-12⁸⁹ and 60% of students in grades K-5.⁹⁰ There is a risk that students will lose their feelings of connectedness if shutdown measures are prolonged.

Additional risks resulting from school closures

School closures may also limit children's access to other benefits offered within the school system such as meals, mental health services, and a protective environment. These factors could "widen the attainment gap, increase the risk of detachment from school and lead to entrenched inequalities that follow children throughout their lives."⁹¹ It is also worth noting the impact COVID-19 has had on graduations. Graduation is a major milestone for many students, however shutdown measures have robbed many students of this celebration. The Canadian Paediatric Society (CPS) has urged education ministries to permit physically distant graduation ceremonies. The CPS advocates that graduation is important for these students to have closure and to help them mentally prepare for the next stage in their lives.⁹²

⁸⁸ Doepke, *supra* note 76.

⁸⁹ New Brunswick Health Council, "New Brunswick Wellness Survey Grades 6-12," *supra* note 84 at 14.

⁹⁰ New Brunswick Health Council, "New Brunswick Elementary Student Wellness Survey Grades K-5," *supra* note 83 at 14.

⁹¹ UNICEF Canada *supra* note 1 at 8.

⁹² Canadian Press, "Students should be allowed to have in-person graduations, Canadian Paediatric Society says" (10 June 2020) online: *CBC* <cbc.ca/news/health/covid-graduations-paediatric-1.5606501>.

Education as a Human Right

Children's right to education is protected by UNCRC article 28 which states:

1. States Parties recognize the right of the child to education, and with a view to achieving this right progressively and on the basis of equal opportunity, they shall, in particular:
 - (a) Make primary education compulsory and available free to all;
 - (b) Encourage the development of different forms of secondary education, including general and vocational education, make them available and accessible to every child, and take appropriate measures such as the introduction of free education and offering financial assistance in case of need;
 - (c) Make higher education accessible to all on the basis of capacity by every appropriate means;
 - (d) Make educational and vocational information and guidance available and accessible to all children;
 - (e) Take measures to encourage regular attendance at schools and the reduction of drop-out rates.
2. States Parties shall take all appropriate measures to ensure that school discipline is administered in a manner consistent with the child's human dignity and in conformity with the present Convention.
3. States Parties shall promote and encourage international cooperation in matters relating to education, in particular with a view to contributing to the elimination of ignorance and illiteracy throughout the world and facilitating access to scientific and technical knowledge and modern teaching methods. In this regard, particular account shall be taken of the needs of developing countries.⁹³

This article clearly states that education must remain accessible and available to all children. Even though COVID-19 has presented additional obstacles to children receiving an education, this right still remains. Thus, education must continue to be accessible and available to all children even if teaching and learning must be done remotely. Furthermore, Article 28 mandates that the right to education be recognized on "the basis of equal opportunity." This is true at all times, but especially now in the midst of this pandemic when recognition of this right is at a high risk. As discussed above, there are already gaps in children's education achievements in Canada, and children facing additional barriers are particularly vulnerable such as those living with disabilities, indigenous children, or those living in rural communities without proper internet

⁹³ UNCRC, *supra* note 3 article 28.

access. Despite these vulnerabilities, these children must be given the same opportunity to receive their education as any other children.

School closures and online learning may widen these gaps if appropriate measures are not taken to mitigate these disadvantages and protect children’s right to education. Governments must take measures to ensure that this and all UNCRC protected rights are recognized (article 4) and ensure that the best interests of the child are protected (article 3). Mitigating education achievement losses and continuing to ensure children have access to quality education are certainly within the child’s best interests. Recommendations on how governments might protect children’s UNCRC article 28 rights are listed below.

Recommendations

*Recommendations from UNICEF*⁹⁴

- Schools have many challenging roles to fulfill and balance during and after lockdown, from providing health-safe environments and hygiene practices; to supporting every student continue and recovering their learning; to providing mental health and psychosocial support to responding to heightened child protection needs. Approaches to continue education during lockdown and to reopen schools should give priority to the contribution of schools and education to the broader well-being of young people, particularly in the early recovery period.
- During school closures, facilitate continued access to a basic level of education to ensure some continuity of learning and support children and parents in providing a normalized daily routine, including technology support to every student for remote learning. School continuity should recognize that some students will not be able to meet learning expectations and offer specialized alternatives, as well as appropriate re-engagement and catch-up once schools open.
- Schools should work to reduce anxiety and “friction” by keeping education continuity simple to engage with, eliminate exams where possible, and avoid a grading system that exacerbates school failure and exclusion.
- Provide psychosocial support to young people as a regular part of learning and with additional support for students who need it, both during and after school closures. This may include additional staffing of school support workers, particularly in the weeks following school re-opening.
- Continue to provide accurate information through effective channels about how adults and children can keep themselves and others safe.
- Reopen schools and childcare at the earliest opportunity, considering new global guidelines to help balance health and the best interests of children. When schools begin to reopen, give priority to children with special needs and those who are vulnerable to detachment and exclusion.

⁹⁴ UNICEF Canada and One Youth, *supra* note 1 at 8.

Recommendations from Human Rights Watch ⁹⁵

- Governments should prioritize efforts to continue education for all children during and after temporary school closures, and make it accessible to all, using all available technology, including radio and television broadcasts, telephones, computers, secure text messaging apps, or other means, including printed materials. These efforts should include adapted, accessible material and communication strategies for children with different disabilities.
- In cases where schools and teachers have very limited resources, governments should consider providing targeted funding to teachers and school officials in under-resourced areas so that they can contact their students, print materials for all, and distribute learning materials in more remote or rural areas. In many areas, teachers often already fund teaching materials out of pocket.
- Governments should focus on mitigating the disproportionate effects on children and youth who already experience barriers accessing education, or who are at higher risk of being excluded, including children with disabilities, asylum seekers and refugees, students in remote locations, and children from poor or otherwise vulnerable communities.
- Governments should track, using gender-disaggregated data, the numbers of children affected by school closures and similarly track the number and gender of children returning when schools reopen, and should develop strategies to prevent gender and other disparities in the number of children returning to school.
- Governments should take all possible measures to provide the fastest and broadest possible internet service for all children to ensure their right to education. They should take steps to mitigate disproportionate hardships for poor and marginalized populations, including finding ways to provide discounted and free access to services and computers.
- Governments should immediately end internet shutdowns.
- Governments should adopt mitigation strategies to address the impacts of school closures on children's learning, for example by working with teachers, school officials and teachers' unions and associations to factor in plans to recover teaching or contact hours lost, adjusting school calendars and exam schedules, and ensuring fair compensation for teachers and school personnel who are working additional hours.
- Governments should prepare for immediate steps to get children back in school once the crisis ends, including individual follow-up with children who don't show up for classes; ensure access to free primary education, and make secondary education accessible and, we believe, free; provide vouchers or financial support to offset school-related expenses for children whose families suffered economic hardship and wouldn't be able to return to school otherwise.
- Governments should perform due diligence to ensure that any EdTech that they select and promote protects children's privacy rights.
- Governments and school should include data privacy clauses in any contracts they sign with EdTech providers, in order to protect the data collected on children during this time from misuse.
- Over the longer term, governments should institute data protection laws for children.

⁹⁵ Human Rights Watch, *supra* note 20.

CHILD PROTECTION

There is no question that children deserve to be protected from abuse and neglect. Child abuse involves any “physical or psychological mistreatment of a child by an adult. . . includ[ing] physical abuse, sexual abuse, emotional maltreatment, and exposure to domestic violence.”⁹⁶ Neglect refers to the failure of a child’s caregiver to provide the child with the necessities of life such as food, clothing, shelter and medical care.⁹⁷ This maltreatment can have devastating short-term and long-term effects on a child including injury, cognitive impairment, emotional trauma, mental health problems and, in some cases, death. Maltreated children have an increased likelihood to develop risky behaviours such as substance abuse and early engagement in sexual activity. Children exposed to violence may also exhibit concerning behavioural challenges such as decreased school attendance, and aggressive, antisocial, or self-destructive behaviours. These behaviours may result in the child experiencing deteriorating relationships, being excluded from school, or getting in trouble with the law.⁹⁸

Children are more likely to suffer maltreatment from their caregivers than from anyone else.⁹⁹ According to the Canadian Index of Child and Youth Well-being, almost one-fourth (24.6%) of children in Canada are exposed to violence and/or sexual abuse in their homes before the age of fifteen.¹⁰⁰ Although possibly indicative of poverty issues rather than neglect, 23.3% of Canadian children between 11-15 years say they go to school or bed hungry because they did not have enough to eat at home.¹⁰¹

⁹⁶ Canadian Child Welfare Research Portal, “Frequently Asked Questions (FAQs)” (no date) online: *Canadian Welfare Research Portal* <cwrp.ca/frequently-asked-questions-faqs>.

⁹⁷ *Ibid.*

⁹⁸ UNCRC, General comment No. 13 (2011): The right of the child to freedom from all forms of violence, UN Doc CRC/C/GC/13 (18 April 2011), at 7-8.

⁹⁹ UN, “Policy Brief: The Impact of COVID-19 on children,” *supra* note 32 at 10.

¹⁰⁰ UN, “Canadian Index,” *supra* note 24 at 41-42.

¹⁰¹ *Ibid* at 30.

COVID-19's Impacts on Child Protection

The statistics above show that child protection is already a serious problem in Canada. The COVID-19 health crisis has great potential to exacerbate this problem. While safety measures have been implemented to slow the spread of COVID-19, they have simultaneously created risks to child protection. Some of these risks include:¹⁰²

- increased poverty and food insecurity due to the loss of jobs and incomes;
- the inability of children to access education either in person or online;
- an increase in children's digital activity and a decrease in caregiver monitoring, which exposes children to greater digital risks;
- an absence of nutritious meals previously provided by schools and care programmes;
- the disruption of peer and social support networks for children/caregivers;
- the disruption of community and social support services for children/caregivers;
- a breakdown in routines for children/caregivers;
- increased alcohol and/or substance use by adolescents/caregivers; and
- *ad hoc* child care arrangements.

Two major sources of these risks include those related to economic insecurity and poverty-related stress and those involving quarantines and social isolation.¹⁰³ These risks will be explored in more detail below.

Child protection risks associated with quarantine and social isolation

COVID-19 quarantine and social isolation measures may put children at risk of facing domestic abuse. These safety measures, especially in the early stages of this pandemic, resulted in school and childcare facility closures. Because of these closures, children were more likely to spend an increased amount of time at home. This is problematic for children already living in abusive homes. As mentioned above, nearly one-quarter of children under the age of fifteen experience abuse in their own homes.¹⁰⁴ Spending more time at home also increases the

¹⁰² Alliance for Child Protection in Humanitarian Action, et al, "COVID-19: Protecting Children from Violence, Abuse and Neglect in the Home" (1 May 2020) at 2, online (pdf): *UNICEF* <[unicef.org/sites/default/files/2020-05/COVID-19-Protecting-children-from-violence-abuse-and-neglect-in-home-2020.pdf](https://www.unicef.org/sites/default/files/2020-05/COVID-19-Protecting-children-from-violence-abuse-and-neglect-in-home-2020.pdf)>.

¹⁰³ Peterman, Amber et al "Pandemics and Violence Against Women and Children" (April 2020) Center for Global Development Working Paper No 528.

¹⁰⁴ UN, "Canadian Index," *supra* note 24 at 41-42.

opportunity for them to be around their abusers.¹⁰⁵ Abusers who feel powerless because of quarantine measures may use violence and other controlling behaviours to regain a sense of control and maintain power over their victims. Furthermore, isolation is already a common tactic used by abusers and social distancing/isolation regulations to prevent the spread of COVID-19 have made it easier for abusers to isolate their victims. This required isolation along with the reduction of services may make it more difficult for victims of this abuse to escape their abusers and seek refuge elsewhere.¹⁰⁶ Additionally, there are dangers for children living with alcoholic caregivers. Since many bars and restaurants were closed or limited to take-out only services, especially at the height of lockdown measures, caregivers with alcohol abuse problems are now more likely to drink at home.¹⁰⁷

Another concern is that child maltreatment may go unnoticed and thus remain unreported because of shutdown measures. Studies have shown that two-thirds of child abuse reports come from professionals, with nearly twenty percent of these reports coming from teachers and school staff.¹⁰⁸ These professionals often serve as a safety net for vulnerable children, however with schools closed and services reduced this safety net has been removed. Recent figures support this, as New Brunswick saw a 40% drop in reports of suspected child abuse in March 2020 in comparison to March 2019.¹⁰⁹ Children may also not have adequate access to child protection services, even for the cases that *are* being reported. These services may be overwhelmed with an increased case load or may be operating on a limited capacity because of COVID-19.¹¹⁰

¹⁰⁵ UN, "Policy Brief," *supra* note 32 at 10.

¹⁰⁶ Peterman et al, *supra* note 103 at 10.

¹⁰⁷ Andrew M Campbell, "An increasing risk of family violence during the Covid-19 pandemic: Strengthening community collaborations to save lives" (2020) at 3, 2: Dec 2020 Forensic Science Intl Reports.

¹⁰⁸ *Ibid*, at 4.

¹⁰⁹ Rachel Cave, "Reports of suspected child abuse have fallen 40 per cent during COVID-19 outbreak" (15 April 2020) online: CBC <www.cbc.ca/news/canada/new-brunswick/child-abuse-reports-down-1.5532297>.

¹¹⁰ Campbell, *supra* note 107 at 5-6.

Child protection risks associated with economic insecurity and poverty

A second major set of risks to child protection include those associated with economic insecurity as a result of COVID-19. Shut-down measures have resulted in job loss and financial strain. In May 2020, Canada's unemployment rate reached 13.7%. This is the highest rate since December 1982.¹¹¹ Parents may have lost their jobs or had their work hours reduced which translates to lowered income levels. With schools and daycares closed, some parents have had to make other childcare arrangements which may add additional financial strain. These circumstances can create economic insecurity within families. This is particularly problematic for families that are already economically disadvantaged. Women may be disproportionately affected as the brunt of childcare often falls on them. They may be forced to take on extra time doing unpaid childcare since their children are not in schools or daycares. This extra care may reduce their opportunities for paid work.¹¹²

These economic challenges could create stress amongst parents and caregivers which may be managed by poor coping strategies. Some of these strategies might include substance abuse, increasing debt loads, and engaging in transactional sex.¹¹³ These added stresses and coping strategies could increase the chances for caregivers to become abusive towards children.¹¹⁴ A survey by the Canadian Mental Health Association found that 23% of parents with children under 18 were experiencing more conflicts with their children. Seventeen percent (17%) of parents reported an increase in yelling and shouting and 17% reported an increase in disciplining their children. Twelve percent (12%) reported being worried about safety from physical, emotional, or domestic violence. It is also concerning that 29% of parents have reported an increase in alcohol use.¹¹⁵ These figures all point to increased stress amongst parents which could increase the risks of children living in these homes of being maltreated. These risks are

¹¹¹ Canadian Press, "Canada's unemployment rate reaches record 13.7%" (5 June 2020) online: *Global News* <globalnews.ca/news/7029601/canada-may-unemployment-rate/>.

¹¹² Peterman, *supra* note 103 at 9.

¹¹³ *Ibid*, at 6.

¹¹⁴ Alliance for Child Protection in Humanitarian Action, *supra* note 102 at 2.

¹¹⁵ Canadian Mental Health Association, "COVID-19 effects on the mental health of vulnerable populations" (24 June 2020) at 1-3, online (pdf): *Canadian Mental Health Association* <mha.ca/wp-content/uploads/2020/06/EN_UBC-CMHA-COVID19-Report-FINAL.pdf>.

particularly concerning for indigenous children and youth, as they are more likely to suffer from abuse and maltreatment than non-indigenous children.¹¹⁶

Child Protection as a Human Right

UNCRC article 19 outlines children’s right to be protected from maltreatment. This provision states:

1. States Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical and mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of the parent(s), legal guardian(s) or any other person who has the care of the child.
2. Such protective measures should, as appropriate, include effective procedures for the establishment of social programmes to provide necessary support for the child and for those who have the care of the child, as well as for other forms of prevention and for identification, reporting, referral, investigation, treatment and follow-up of instances of child maltreatment described heretofore, and, as appropriate, for judicial involvement.¹¹⁷

General comment 13 elaborates on UNCRC article 19 and reminds States that their responsibility to uphold children’s right to be protected from maltreatment lies at all levels of government: federal, provincial, and municipal.¹¹⁸ This comment further describes States’ responsibilities as:

[the] due diligence and the obligation to prevent violence or violations of human rights, the obligation to protect child victims and witnesses from human rights violations, the obligation to investigate and to punish those responsible, and the obligation to provide access to redress human rights violations. Regardless of whether violence takes place, States parties have a positive and active obligation to support and assist parents and other caregivers to secure, within their abilities and financial capacities and with respect for the growing capacities of the child, the living conditions necessary for the child’s optimal development (arts. 18 and 27). States parties, furthermore, shall ensure that all persons who, within the context of their work, are responsible for the prevention of, protection from, and

¹¹⁶ Department of Justice, “Victimization of Indigenous Children and Youth” (July 2017) at 1, online: *Department of Justice Canada* <www.justice.gc.ca/eng/rp-pr/jr/jf-pf/2017/docs/july03.pdf>.

¹¹⁷ UNCRC, *supra* note 3 article 19.

¹¹⁸ UNCRC General comment 13, *supra* note 98 at 4.

reaction to violence and in the justice systems are addressing the needs and respecting the rights of children.¹¹⁹

These provisions make it clear that States have an obligation to take an active role in protecting children from maltreatment. COVID-19 has created additional risk factors for children to suffer from maltreatment and, as mandated by this provision, governments must take “all appropriate legislative, administrative, social and educational measures” to protect children from abuse. Although this pandemic has presented additional challenges that might make meeting this mandate more difficult, these obligations still remain. Recommendations from leading human rights organizations on how governments could actively protect children during the COVID-19 pandemic are listed in the following sections.

Recommendations

Given the reduced numbers of child abuse reports, there is concern that these reports will significantly increase once children do return to school. These reports could overwhelm the system if care is not taken now to address this increase. Instead of waiting for children’s return to school in the fall (or whenever it is safe to do so), agencies should be collaborating right now with community organizations such as churches, summer camps, libraries, youth clubs and recreational facilities to develop plans to recognize and report suspected incidents of child abuse.¹²⁰ The following sections outline recommendations from major human rights organizations for upholding child protection rights in the midst of this pandemic.

Recommendations from the United Nations

- Rebalance the combination of interventions to minimize the impact of standard physical distancing and lock-down strategies on children in low-income countries and communities and expand social protection programmes to reach the most vulnerable children.
- Prioritize the continuity of child-centered services, with a particular focus on equity of access – particularly in relation to schooling, nutrition programmes, immunization and other maternal and newborn care, and community-based child protection programmes.

¹¹⁹ *Ibid.*

¹²⁰ Campbell, *supra* note 107 at 5.

- Provide practical support to parents and caregivers, including how to talk about the pandemic with children, how to manage their own mental health and the mental health of their children, and tools to help support their children’s learning.¹²¹
- Increase investment in online services and civil society organizations
- Make sure judicial systems continue to prosecute abusers
- Set up emergency warning systems in pharmacies and grocery stores
- Declare shelters as essential services
- Create safe ways for women to seek support, without alerting their abusers
- Avoid releasing prisoners convicted of violence against women in any form
- Scale up public awareness campaigns, particularly those targeted at men and boys¹²²

Recommendations from UNICEF Canada ¹²³

- Work with children’s services to ensure protection of children temporarily separated from their families.
- Designate child protection services as essential and ensure outreach and support continues, with increased capacity following the lockdown.
- Consider some community children’s programs (such as day camps and youth clubs) as essential, with safe physical spaces for children and youth to access support and relieve.
- Provide enhanced support to homeless young people.

Recommendations from Alliance for Child Protection in Human Action ¹²⁴

- Include information on the protection of children from violence, abuse, and neglect during COVID-19 in general public health messaging, educational platforms, and within existing programs.
- Provide parents and caregivers, including those who are the hardest to reach, with a variety of accessible resources that support positive parenting, non-violent discipline, and positive coping and stress management skills.
- Provide children with continued access to school-based counselling through telephone or online support where face-to-face contact is not possible, while enabling counsellors or other relevant school staff to continue to monitor the well-being of children in at-risk families.
- Encourage school counselors to work with at-risk children to develop personal safety plans.

¹²¹ UN “Policy Brief,” *supra* note 32 at 3.

¹²² United Nations, “UN chief calls for domestic violence ‘ceasefire’ amid ‘horrifying global surge’” (6 April 2020) online: *United Nations* <news.un.org/en/story/2020/04/1061052>.

¹²³ UNICEF Canada and One Youth, *supra* note 1 at 7.

¹²⁴ Alliance for Child Protection in Human Action, *supra* note 102 at 3-4.

- Provide additional resources to adapt and strengthen child helplines to operate in the context of COVID-19, including enhanced capacity with child-friendly, COVID-19 counsellor training, and adapted relevant referral strategies.
- Alert professionals who may have contact with children despite social distancing measures (e.g. pharmacists, medical personnel, school staff, police, first responder(s) on their roles in identifying and reporting signs of abuse and neglect.
- Provide emergency case assistance to vulnerable families to mitigate disruptions due to COVID-related livelihood shocks.
- Strengthen the capacities of the social service workforce to support children and families facing special challenges, such as a caregiver's mental illness, disability, drug dependency and/or domestic violence, which may have increased due to the pandemic.
- Support child protection authorities to meet their statutory duties throughout the COVID-19 response.
- Support para-social workers in other community-level child protection workers to deliver child protection services in fragile contexts and humanitarian crisis.
- Empower social service providers to effectively assess the risk of face-to-face versus telephone/online support (for both pre-existing and new cases) with due consideration for the safety of children at risk of violence, and to conduct home visits when necessary.
- In situations where social service workers have face-to-face interactions with sick individuals or their direct contacts, provide the appropriate Personal Protective Equipment as per WHO guidance or nationally mandated.
- Ensure child and family courts function as an essential service while also adapting to public health measures.
- Continue to hold emergency hearings and execute court orders for the care and protection of children who are at an immediate risk of neglect or abuse.
- Adapt and continue to delivery of health services that mitigate risk factors for violence, abuse, and neglect (e.g. caregiver's mental health, substance misuse, domestic violence, etc.).
- Adapt and continue key child protection interventions in pre-existing humanitarian settings that support children, families, and communities and promote family unity.
- Scale up the capacity of the family-based alternative care system to prevent unnecessary recourse to residential care during the pandemic.
- Provide children who are experiencing trauma with virtual specialized mental health and psychosocial support when public health measures preclude face-to-face contact.

ONLINE SAFETY

An important facet of child protection is ensuring their online safety. There are two primary ways that children's online safety is put at risk, the first being through online sexual exploitation. Technology is a commonly used tool for predators looking to exploit children for sexual purposes. These predators use the internet to send sexual videos, audio recordings, images, or messages to children or to solicit such content from them.¹²⁵ Sexual predators often groom the child to gain their trust or manipulate the child into complying before sexual contact is made.¹²⁶ Once the predators have solicited content from a child, they may use it for their own purposes and/or share it with others. The second major online safety risk for children is their digital privacy to be violated through surveillance or breach of their personal data. Both of these risks are discussed below.

COVID-19's Impacts on Online Safety

Increased risk because of increased time spent online

Since COVID-19 was declared a pandemic in mid-March 2020, Canadian telecommunication companies have reported a significant increase in internet usage. The Canadian Wireless Telecommunications Association reported an increase in home internet usage by as much as 48.7% for downloads and as much as 69.2% for uploads since the beginning of the pandemic.¹²⁷ Certainly children's internet usage is contributing to these figures. School closures have meant that children and youth are more likely to be spending an increased amount of time at home. Children may also be increasingly relying on technology for virtual classrooms and other forms of online learning. Social distancing measures may leave children feeling isolated. This may lead them to spend more time on social media platforms to communicate with friends and

¹²⁵ Canadian Centre for Child Protection, "Understanding Child Sexual Abuse: A guide for protective parents/guardians" (October 2018) at 6-7, online (pdf): *Canadian Centre for Child Protection* <protectchildren.ca/pdfs/C3P_SurvivorsResources_UnderstandingChildSexualAbuse_en.pdf>.

¹²⁶ *Ibid* at 5.

¹²⁷ Canadian Wireless Telecommunications Association, "CWTA Survey Reveals Significant Increases and Shifts in Canadian Telecommunication Network Traffic as a Result of COVID-19" (25 May 2020), online: *NewsWire* <newswire.ca/news-releases/cwta-survey-reveals-significant-increases-and-shifts-in-canadian-telecommunication-network-traffic-as-a-result-of-covid-19-837314757.html>.

loved ones. In addition, depending on the child's parent(s)'s status of employment, this may mean that a significant amount of this time spent online is unsupervised. These factors all contribute to the likelihood that children and youth may be spending an increased amount of time online during this pandemic.

The more time children spend online, especially while unsupervised, the more opportunities there are for their online safety to be put at risk. UNICEF has identified several online safety risks for children that may arise during this pandemic. These risks include online sexual exploitation, cyberbullying, online risk-taking behaviour, [exposure to] potentially harmful content, inappropriate collection, use and sharing of data, and limited child safeguarding online.¹²⁸

Risk of online sexual exploitation

Unfortunately, with the increased likelihood of sexual predators spending time at home, the demand for sexually exploitive material will also increase. Predators know that children are spending more time at home and will take advantage of this.¹²⁹ The Canadian Centre for Child Protection (CCCP) has reported an “significant uptick” in discussions surrounding preying on children spending more time online by internet predators on dark web forums.¹³⁰ The CCCP has also reported a significant increase in reports to their tip line for suspected cases of child exploitation. A “busy” weekend before the COVID-19 outbreak saw about 15 calls to the tip line, however one weekend in mid-April saw 80 reports to their tip line.¹³¹ Further adding to this risk is prominent social media platforms like Facebook, Twitter and YouTube reduced their in-office staffing personnel. This staffing reduction could result in slower review and removal times for

¹²⁸ UNICEF, “Covid-19 and its implications for protecting children online” (15 April 2020) at 1-2, online (pdf): <reliefweb.int/sites/reliefweb.int/files/resources/COVID-19%20and%20its%20Implications%20for%20Protecting%20Children%20Online.pdf>.

¹²⁹ Meghan Collie and Laura Hensley, “Kids are online more than ever during the pandemic, creating ‘opportunity’ for predators” (9 May 2020), online: *Global News* <globalnews.ca/news/6905885/coronavirus-cyber-safety-children/>.

¹³⁰ Marsha McLeod, “Child protection organizations seeing ‘significant uptick’ in predators using COVID-19 as opportunity to exploit online” (23 April 2020), online: *The Globe and Mail* <www.theglobeandmail.com/canada/article-child-protection-organizations-seeing-significant-uptick-in/>.

¹³¹ *Ibid.*

harmful content. As a result, this decrease in safety measures creates more opportunity for children to be targeted by online predators.¹³²

Risks to online privacy

The other main area of concern for children's online safety during the COVID-19 crisis is protecting their privacy. With children spending more time online, there is more potential for their privacy to be breached. This is particularly concerning with the move to digital education delivery and the emerging use of COVID-19 tracing apps.¹³³ With this increased reliance and use of technology, there is concern that children may be under surveillance. There is also a risk that their personal information may be shared without their consent or used for purposes beyond its intended use. For example, parents may install a COVID-19 contact tracing app on the child's electronic device without their permission which violates their right to privacy. Although the use of these technological methods is not new, the scale and the rapid response of this increased reliance because of COVID-19 has created the potential for children's privacy concerns to be overlooked.¹³⁴

Online Safety as a Human Right

Children have the right to be protected from all forms of sexual exploitation. UNCRRC article 34 states that:

States Parties undertake to protect the child from all forms of sexual exploitation and sexual abuse. For these purposes, States Parties shall in particular take all appropriate national, bilateral and multilateral measures to prevent:

- (a) The inducement or coercion of a child to engage in any unlawful sexual activity;
- (b) The exploitative use of children in prostitution or other unlawful sexual practices;
- (c) The exploitative use of children in pornographic performances and materials.¹³⁵

¹³² Human Rights Watch, *supra* note 20.

¹³³ Child Rights International Network, "Surveillance and digital privacy during Covid-19" (30 June 2020), online: *Child Rights International Network* <home.crin.org/readlistenwatch/stories/surveillance-digital-privacy-covid>.

¹³⁴ Steven Vosloo, Melanie Penagos and Linda Raftree, "COVID-19 and children's digital privacy" (07 April 2020) online: *UNICEF* <unicef.org/globalinsight/stories/covid-19-and-childrens-digital-privacy>.

¹³⁵ UNCRRC, *supra* note 3 article 34.

This provision protects children from “all forms of sexual exploitation” which would include online exploitation. The risk for online exploitation of children has increased during the COVID-19 crisis, as children are spending an increased amount of time online for reasons discussed above. The UNCRC clearly mandates that States have the responsibility to take “all appropriate national, bilateral, and multilateral measures” to prevent this exploitation. Given the increased risks for online child exploitation, it is both appropriate and necessary for States to increase their efforts to ensure children are kept safe from this danger. Key recommendations to governments and policy makers from leading human rights organizations on how this can be accomplished will be outlined in the next section.

Children also have the right to privacy. UNCRC article 16 states that:

1. No child shall be subjected to arbitrary or unlawful interference with his or her privacy, family, home or correspondence, nor to unlawful attacks on his or her honour and reputation.
2. The child has the right to the protection of the law against such interference or attacks.¹³⁶

Data collected during the COVID-19 crisis for educational purposes or for contact tracing apps, for example, may contain highly personal information. If this data is breached, that would constitute interference with the child’s privacy and thus would be a violation of article 16. Relevant recommendations on how States can protect this right are included in the next section.

While children have the right to online safety, this right must also be balanced against their right to privacy. Other rights that might be necessary to consider when seeking to finding this balance include their right to education (article 28), their right to freedom of expression and to information by media of the child’s choice (article 13) and their right to have their voices heard (article 12).¹³⁷ Finding this balance between this rights can be a complicated process and it is one that has yet to reach any definitive answers.¹³⁸ Nevertheless, it is important that policy makers approach children’s human rights holistically and consider how policy decisions may impact these

¹³⁶ UNCRC, *supra* note 3 article 16.

¹³⁷ Child Rights International Network “Briefing: Children’s rights in the digital age” (no date), online: *Child Rights International Network* <home.crin.org/issues/digital-rights/childrens-right-digital-age>.

¹³⁸ *Ibid.*

rights. As always when making decisions that affect children, their best interest must be a primary consideration (CRC article 3). This guiding principle may serve to be invaluable in making policy decisions that will strike a balance between seemingly competing rights.

Recommendations

Recommendations from UNICEF ¹³⁹

Empower children online

- Parents and caregivers, school authorities, digital technology companies, media providers, social service workers and governments must recognize that children are agents of change and should equip them with the knowledge and information they need to navigate their online lives safely during the COVID-19 crisis and beyond.
- Messages, information and advice on navigating the digital world should be targeted to children in a manner and via the channels that most resonate with them. Children should also be informed about how to seek out help and support.
- Children should be encouraged to use their voices online to support others in need of help during this crisis. Children's perspectives should inform improvements to platforms and other changes intended to keep them engaged and safe during this quickly moving emergency. Government and social service providers should incorporate children's voices and actively involve children in policymaking that affects them.

Support parents and caregivers to help children stay online

- Parents and caregivers can help children access the online resources that are vital for learning, socializing and playing in the era of COVID-19. At the same time, parents and caregivers need to be alert to the online risks for children. Governments, companies and others should support parents with appropriate guidance and tools, including how to respond to and, if needed, report harmful contacts, conduct and content.
- Parents and caregivers can be alert to signs of distress that may emerge in connection with children's online activity. For example, if a child is experiencing cyberbullying, they may give off warning signs, such as using their device more or less frequently, or becoming withdrawn or depressed. Governments, companies and school administrators should make parents and caregivers familiar with relevant policies, as well as online and offline reporting mechanisms. Parents should have the numbers of support helplines and hotlines handy and contact the police if their children's distress is related to threats, potential crimes or other illegal behaviors.

Provide a safe online learning experience for students

- Schools should create or update their current safeguarding policies to reflect the new realities for children learning from home. One-on-one online interactions between school staff and students should be transparent and regulated. Specific safeguards may include requiring schools to share online schedules; advising children to wear appropriate clothing when in front of webcams and not to connect with their teachers or virtual classrooms from bedrooms; and refraining from using private instant messaging services in teacher-student communications or asking for consent from parents for such sessions. Schools should also seek digital security mechanisms to ensure that only authorized individuals are able to access online learning platforms and that those platforms do not record and store the virtual learning sessions by default.

¹³⁹ UNICEF, "COVID-19 and its implications for protecting children online (April 2020)" (15 April 2020) at 2-5, online (pdf): [UNICEF <reliefweb.int/sites/reliefweb.int/files/resources/COVID-19%20and%20its%20Implications%20for%20Protecting%20Children%20Online.pdf>](https://reliefweb.int/sites/reliefweb.int/files/resources/COVID-19%20and%20its%20Implications%20for%20Protecting%20Children%20Online.pdf)

- Schools should clearly communicate online safety policies and provide resources and information on digital safety to support parents and caregivers in creating a positive online learning experience e.g. Interland, internetmatters.org, NSPCC and Childnet International.
- Schools should clearly communicate with all learners the expected code of conduct on digital platforms and communications, just as would be expected for 'in person' behavior. They should promote and monitor good online behavior among students. Schools should be aware that younger children in particular may not have developed or practiced these skills before and could unintentionally hurt others. Schoolyard bullying among classmates may easily morph into cyberbullying, and school authorities need to adapt anti-bullying rules and policies to online spaces and make them clear to students and parents
- Schools should ensure that children have uninterrupted access to school-based counseling services. In the absence of in-person contact with counselors, children in distress must have safe, confidential means of securing support online or by phone. There may be increased need for counselling services in the context of COVID-19, where children may be experiencing family problems, domestic violence or heightened feelings of insecurity and anxiety. Girls, children with disabilities and those perceived to be different or at greater risk of catching or spreading COVID-19 may be experiencing increased anxieties requiring additional support. Schools should promote country-specific helplines or online counselling platforms. Schools should also update guidance for teachers on identifying and reporting child abuse or neglect via their virtual communications.

Make online platforms safe and accessible for children

- In order to avoid exacerbating inequalities during the pandemic, technology companies should work with governments to improve access to digital devices and internet connectivity for disadvantaged children, including those who are affected by poverty, separated, on the move, disabled, in domestic and family violence settings, conflict settings and those who may have lost parents or primary caregivers to the pandemic. ITU's new Global Network Resiliency Platform (#REG4COVID) is a place for regulators, government authorities and industry to share and pool experiences, ongoing initiatives and innovative policy and regulatory measures designed to help ensure communities (and children) remain connected. Technology companies should also make online learning resources available for free or at significantly reduced cost to educators and students. Mobile operators should consider providing online learning resources and COVID-19 health information for free.

Strengthening national prevention, response and support services

- Governments should actively monitor how restricted movement and lockdowns may exacerbate different forms of violence, both offline and online, using the latest data and existing models to inform policy. Governments should enforce existing regulations and strengthen law enforcement to help monitor and respond to increase online risks.
- Governments should allocate sufficient resources to bolster, train and equip core child protection workers to ensure that they can continue to keep children safe throughout the pandemic. Wherever possible, countries should maintain center-based supports and home visiting for those severely affected or adapt and deliver social services virtually.
- Governments should train health, education and social service workers on the impact that COVID-19 may have on child well-being, including increased online risks. Those providing front line mental health/psychosocial support will need skills in talking to children about COVID-19 and addressing their anxiety and insecurity. Special attentions should be paid to the most vulnerable children including those separated, on the move, disabled, in conflict settings and those who may have lost parents or primary caregivers to the pandemic.
- Government should be aware of the potential increased online risks to children during the pandemic and seek to address them through increased monitoring and enforcement of existing regulations. Law enforcement should be supported to monitor a potential increase in online offending behaviour and have their units functional to respond to this.

- Governments should make sure social service providers, schools, parents, caregivers and children are aware of local reporting mechanisms, and that they have the support numbers of local helplines and hotlines. If they do not already exist, local helplines and hotlines should be installed to support children in distress. The major international reporting networks include INHOPE Hotlines and IWF portals. Children can find direct support through the nationally-based Child Helpline. The public should be directed to contact the police when there is imminent danger.
- To complement efforts to connect children to resources for online learning, socialization and play, governments should step up educational initiatives on child online safety. These should include raising awareness about online risks and resources, using media and other communications channels to spread key messages.

Protecting Children’s Digital Privacy¹⁴⁰

- Innovate to minimize trade-offs: Developers of technology-driven solutions should safely explore all avenues for minimizing the trade-off between data privacy and data sharing, especially for children.
- Apply rights-based principles: Governments should apply rights-based principles to health-related data tracking so that these measures are temporary, necessary, proportionate and transparent.
- Learn and adapt: Beyond the immediate crisis, policymakers and technologists must build on valuable lessons learned now when adapting privacy guidelines for the future. Current guidelines may “not consider many of the risks presented by the novel digital surveillance measures that countries have enacted in response to COVID-19.” Further, future guidelines must give adequate attention to the rights of children, which are often not sufficiently prioritized.
- Include children: A core requirement for both safer innovation and the development of stronger privacy standards is the application of guidelines for child rights in the design of digital tools and measures. Where possible, children should be included in the design and testing process from the beginning. Children are part of the digital health surveillance ecosystem and should not be an afterthought in the creation of tech-driven solutions or policymaking. Health-related data collected from all users, including children, can be beneficial to societies, but only if it is done safely and without the loss of trust by the youngest generation of internet users.

Recommendations from Human Rights Watch¹⁴¹

- Governments should provide training to health, education, and child services staff on COVID-19 related child protection risks, including on the prevention of sexual exploitation and abuse and how to safely report concerns.
- Governments should conduct public education campaigns regarding the risks of online sexual exploitation of children, and increase information sharing on referral and other support services available for children at risk of exploitation.
- Governments should ensure that hotlines or other mechanisms to report online and other sexual exploitation are available and publicized.
- Governments should support public campaigns urging parents to discuss internet safety with children of all ages, review and approve games and apps before they are downloaded, set online privacy settings to the strictest level possible, and monitor children’s use of the internet, including the child’s profile and what they post online.
- Governments should ensure that adequate resources are directed towards enforcement mechanisms that hold perpetrators accountable.

¹⁴⁰ Vosloo, *supra* note 134.

¹⁴¹ Human Rights Watch, *supra* note 20.

CHILDREN DEPRIVED OF THEIR LIBERTY

The United Nations Committee on the Rights of the Child defines the deprivation of liberty as “any form of detention or imprisonment or the placement of a person in a public or private custodial setting, from which this person is not permitted to leave at will, by order of any judicial, administrative or other public authority.”¹⁴² According to Statistics Canada, approximately 7,000 youth across Canada are supervised either in custody or community programs on any given day.¹⁴³ Aboriginal youth are disproportionately represented within these figures. While Aboriginal youth represent only 8% of the total Canadian youth population, they represent 43% of correctional service admissions.¹⁴⁴

COVID-19’s Impacts on Youth Deprived of Liberty

The human rights of children and youth deprived of their liberty in detention centres and other community programs such as rehabilitation centres are faced with multiple risks because of COVID-19. First, there are the risks associated with the facilities themselves. The structural design of these facilities and the number of youth living in them might make physical distancing extremely difficult, if not impossible. Youth living in these environments are more prone to infections because of their close proximity to others. Living within these facilities may also restrict access to hygiene and health care. These effects are particularly problematic for youth with pre-existing health conditions as they may have a greater risk of contracting the virus. Another risk is that in some cases youth may have their transition out of centres expedited because of facility closures or population reductions.¹⁴⁵ Depending on the circumstances, this may not be in the youth’s best interest.

¹⁴² UNCRC, General comment No. 24 (2019) on children’s rights in the child justice system, UN Doc CRC/C/GC/24 (18 September 2019) at 4.

¹⁴³ Jamil Malakieh, “Adult and youth correctional statistics in Canada, 2017/2018” (9 May 2019) online: *Statistics Canada* <www150.statcan.gc.ca/n1/pub/85-002-x/2019001/article/00010-eng.htm>.

¹⁴⁴ *Ibid.*

¹⁴⁵ Better Care Network, The Alliance for Child Protection in Humanitarian Action and UNICEF, “Protection of Children During the COVID-19 Pandemic, Children and Alternative Care, Immediate Response Measures” (2020) at 3, online (pdf): *Alliance CPHA* <alliancecpha.org/en/system/tdf/library/attachments/covid-19_alternative_care_technical_note_final.pdf?file=1&type=node&id=37605>.

Safety and social distancing measures to prevent the spread of COVID-19 have also created risks. For example, these measures have resulted in cancelled family visits, reduced access to legal services, and cancelled or reduced education and social programs.¹⁴⁶ Court closures, trial and hearing suspensions, movement restrictions and limited access to lawyers and legal services may all increase children's deprivation of liberty.¹⁴⁷ In some cases, these youth have been isolated from others for extensive periods of time to enforce physical distancing.¹⁴⁸ There is also concern that these youth will not have access to information about the pandemic and how best to protect themselves.¹⁴⁹ Indigenous youth in correctional services are particularly vulnerable to these risks given their overrepresentation in the correctional centre population.

Human Rights of Children Deprived of Liberty

Even though they might be deprived of their liberty, youth in correctional centres still have human rights. UNCRC article 37 states:

States Parties shall ensure that:

- (a) No child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment. Neither capital punishment nor life imprisonment without possibility of release shall be imposed for offences committed by persons below eighteen years of age;
- (b) 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;
- (c) Every child deprived of liberty shall be treated with humanity and respect for the inherent dignity of the human person, and in a manner which takes into account the needs of persons of his or her age. In particular, every child deprived of liberty shall be separated from adults unless it is considered in the child's best interest not to do so and shall have the right to maintain contact

¹⁴⁶ UNICEF Canada and One Youth, *supra* note 1 at 1.

¹⁴⁷ Alliance for Child Protection in Humanitarian Action - UNICEF, "Technical Note: COVID-19 and Children Deprived of their Liberty" (8 April 2020) at 3, online (pdf): *Alliance CPHA* <alliancecpha.org/en/system/tdf/library/attachments/covid-19_and_children_deprived_of_their_liberty_v1_lowres_0.pdf?file=1&type=node&id=37576>.

¹⁴⁸ UNICEF Canada and One Youth, *supra* note 1 at 4.

¹⁴⁹ World Health Organization, "Preparedness, prevention and control of COVID-19 in prisons and other places of detention, Interim Guidance (15 March 2020) at 3, online (pdf): *World Health Organization* <www.euro.who.int/__data/assets/pdf_file/0019/434026/Preparedness-prevention-and-control-of-COVID-19-in-prisons.pdf?ua=1>.

- with his or her family through correspondence and visits, save in exceptional circumstances;
- (d) Every child deprived of his or liberty shall have the right to prompt access to legal and other appropriate assistance, as well as the right to challenge the legality of the deprivation of his or her liberty before a court or other competent, independent and impartial authority, and to a prompt decision on any such action.¹⁵⁰

Under this provision, governments have a responsibility to protect the rights of children deprived of their liberty. This includes ensuring children deprived of their liberty have the right to education, the right to medical care, and the right to unrestricted communication with his or her lawyer. Additionally, general comment 24 elaborates on article 37(c) and says that communication with the youth's family and friends should be frequent, which includes opportunities for home and family visits.¹⁵¹ As discussed above, each of these rights has been identified as being at risk because of the COVID-19 pandemic. It is essential that States take action to address these risks and ensure that the rights of youth deprived of their liberty, particularly Aboriginal youth who are overrepresented in correctional facilities, are upheld despite the challenges presented by the health crisis. Recommendations on protecting the interests of children and youth deprived of their liberty during the COVID-19 pandemic are outlined below.

Recommendations

General Recommendations

In an open letter to the Minister of Justice and Attorney General of Canada, children's rights organizations advocated for greater transparency from governments and institutions about youth in our justice systems during the COVID-19 crisis. This letter "call[s] on governments to pursue all efforts to divert youth from institutions during the pandemic and to actively seek the release and reintegration of youth currently detained, whenever possible."¹⁵² This

¹⁵⁰ UNCRC, *supra* note 3 article 37.

¹⁵¹ UNCRC general comment No. 24, *supra* note 142 at 20.

¹⁵² Letter from UNICEF Canada et al to Honorable David Lametti, Minister of Justice and Attorney General of Canada (6 May 2020), online (pdf) <7f9b59af-af92-41cd-8e6c-aa2870f170de.filesusr.com/ugd/f54667_7245d50dca744f7c86048ceb221483e1.pdf>.

transparency is an important step to ensure the interests of children and youth deprived of their liberty are protected.

Responses in other jurisdictions

Further direction can be taken from how other Canadian jurisdictions have handled these issues. Provincially operated youth justice centres in Ontario are enhancing screening processes. While visits with professionals including legal counsel are still continuing, virtual meetings are the preferred method. However, youth in Ontario facilities have had all in-person personal visits and volunteer activities cancelled although communication with family is still being facilitated via phone and video calling.¹⁵³ Similar responses have been implemented in Alberta.¹⁵⁴ Responding to pleas from lawyers, Manitoba’s government decided that they would no longer keep youth waiting for bail in solitary confinement to prevent the spread of COVID-19. In addition, any youth entering the justice system in Manitoba would be isolating in a separate facility at the Manitoba Youth Centre for fourteen days before being admitted to the main facility.¹⁵⁵

Recommendations from UNICEF ¹⁵⁶

Recommendations related to the use of deprivation of liberty and emergency measures during the COVID-19 outbreak

- State responses to combat the COVID-19 pandemic for children deprived of their liberty, including emergency measures based on public health goals, must strictly adhere to international human rights law and standards. Any response should be proportionate, necessary, time-bound, subject to review, non-discriminatory to the evaluated risk and based on the best interests of children.
- States must not use emergency measures in a manner to unlawfully restrict or suppress children’s rights, including deprivation of their liberty, recognizing that certain rights are non-derogable;
- States must take particular care to address the unique vulnerabilities of girls and boys, those who are discriminated against on the basis of sexual orientation on gender identity, children with disabilities, migrant/asylum seeker/refugee/stateless children, indigenous children, children from ethnic minority

¹⁵³ Ontario Ministry of Children, Community and Social Services “Youth and the law, Update on services during COVID-19 outbreak” (no date), online: *Ontario Ministry of Children, Community and Social Services* <children.gov.on.ca/htdocs/English/youthandthelaw/index.aspx>.

¹⁵⁴ Inform Alberta, “Correctional Centres- Youth” (2020) online: *Inform Alberta* <informalberta.ca/public/service/serviceProfileStyled.do?serviceQueryId=1196>.

¹⁵⁵ Austin Grabish, “Province will no longer keep Manitoba youth waiting for bail in solitary confinement at remand centre” (16 April 2020), online: *CBC* <www.cbc.ca/news/canada/manitoba/manitoba-to-stop-keeping-youth-at-remand-1.5534866>.

¹⁵⁶ Alliance for Child Protection in Humanitarian Action – UNICEF, *supra* note 147 at 1-10.

communities, children in street situations, children associated with armed groups and armed forces and any other vulnerable or marginalized groups;

- States should ensure that emergency measures taken to prevent, contain or respond to the virus do not result in continued detention of children who should otherwise be released or an increase in the number of children deprived of their liberty.

Compliance with International Human Rights Law and Standards on Justice for Children

- As a general rule, use arrest, detention and imprisonment only as a measure of last resort and for the shortest appropriate period of time;
- Expeditiously and completely end the deprivation of liberty of children on the basis of their or their parents' migration status, as it is never in the children's best interests, and prohibit immigration detention of children in law, policy and practice;
- Treat every child deprived of liberty with humanity and respect for the inherent dignity of the human person and strictly safeguard their due process rights and procedural guarantees. Public authorities, including prosecutors and judges, should exercise their detention powers cautiously, considering the extreme nature of the detention measure, the heightened vulnerability of the child, and upholding the best interests of the child as a primary consideration, particularly in the current context of COVID-19. Alternative measures should be prioritized and promoted with all the due safeguards for the children and their families at this time;
- Implement measures so that every child can maintain regular contact with her or his family through correspondence and visits;
- Provide every child deprived of his or her liberty with prompt access to specialized legal and other appropriate assistance, and the method and means to challenge the legality of the deprivation of liberty before a court or other competent, independent and impartial authority, and with a prompt decision on any such action;
- Where children cannot be released or where alternative measures are not possible, take concrete steps to improve and maintain conditions in facilities where children are deprived of their liberty so that they meet the relevant minimum international standards, including with respect to child/staff ratios, and to provide children with necessary services.

Safeguarding Against Discrimination

- States should provide children deprived of their liberty with access to the same level of health care and other services available to children in the community, without discrimination;
- States should put in place adequate measures to ensure gender-responsive approaches in addressing the COVID-19 emergency in locations where children are deprived of their liberty, including providing for the special needs of babies and infants deprived of liberty with their mothers in particular breastfeeding mothers;
- States should provide children who are deprived of their liberty with the same information provided to children in the community about the pandemic, as well as how to protect themselves, ensuring accessing and child-friendly information;
- States should provide children who are deprived of their liberty with the same information provided to children in the community about the pandemic, as well as how to protect themselves, ensuring accessible and child-friendly information;
- States should not detain children living on the streets, recognizing their unique situation may make it impossible to comply with some measures to halt the spread of COVID-19. In such case children should be connected to national child protection authorities or non-government services.

Prioritizing Children for Immediate Release

- States should immediately release children who can safely return to their families and communities. Where it is safe to do so and in consideration of the best interests of the child, including the increased risk of illness in detention, and taking into account the views of the child, States should prioritize release of children deprived of their liberty to their families, extended families, other family-based care, communities, or appropriate health care facilities:
 - All children and their caregivers who are deprived of their liberty together as a result of criminal process against the caregiver for nonviolent, minor or petty offences, and those due for release or nearing the end of their sentences;
 - All children held in pre-trial detention regardless of the type of offence, as they are presumed to be innocent;
 - All children who are deprived of their liberty for status offences (offences not considered a crime if committed by adults);
 - All children at highest risk of complications due to infection, including those with pre-existing physical and mental health conditions;
 - All children sentenced for nonviolent, minor or petty offences, and those due to release or nearing the end of their sentences;
 - All children in immigration detention;
 - All children detained under national security frameworks only for affiliation with an armed group;
 - Any other children for whom it has been determined feasible and safe to be released.

Preventing Admission of New Children to Detention Facilities

- States should undertake all appropriate measures to prevent new admissions of children to places of detention. States should place an immediate moratorium on arrests, rounding up of children in street situations, overnight holds, and other new admissions of children to detention facilities. However, where a competent authority determines, considering the best interests of the child, that admission to a situation of a deprivation of liberty is legal, necessary, and proportionate in the individual circumstances, States must:
 - Screen all children (and caregivers when they are detained together) and take all steps consistent with public health protocols issued by the World Health Organization;
 - Where physical distancing, isolation or quarantine of a child is warranted for health reasons these measures should be taken at home or in a health care facility, not in a detention facility.

Protecting the Health and Well-being of Children in Detention

- States should protect the continued health and well-being of children who remain in detention. Children who are not subject to immediate release measures and who are deprived of their liberty during the pandemic should be provided with access to services necessary to enable their continued health and wellbeing, including health care to address COVID-19 related needs, without discrimination. Authorities should:
 - Monitor children's health for symptoms of the disease and take appropriate treatment and containment steps for any who exhibit such symptoms consistent with WHO guidelines for health monitoring, containment and treatment;

- Make any decisions to place a child in medical isolation based only on medical necessity as a result of a clinical decision and subject to authorization by law or the regulation;
- Inform children placed in isolation for medical reasons of the reason why they are being isolated. If physical distancing or isolation is needed to safeguard the health of the child or others, then home-based or health-facility quarantine should be used consistent with WHO guidelines;
- Never place a child in solitary confinement for any reason, as it is forbidden under international law, including for health reasons; health-related isolation should not be used *de facto* as solitary confinement or as a punishment;
- Provide children with access to adequate health, nutrition, education, and legal services, and services to address violence (including gender-based violence) and other services adapted to the need for physical distancing or other disease containment measures;
- Provide enhanced access to water, sanitation, hygiene services and supplies, particularly soap and water, and provide facilities with necessary cleaning supplies to help prevent and manage spread of the infection;
- Provide tailored, gender-sensitive and age-appropriate Mental Health and Psychosocial Support Services (MHPSS) to children and their caregivers, including those with pre-existing mental health and psychosocial problems and those experiencing distress and fear regarding COVID-19;
- Implement procedures to allow children who are deprived of their liberty to maintain regular access and contact with their guardians and families, including by:
 - Instructing facility staff to increase and provide regular updates (including by phone or computer) to families about the location, health and well-being of the child and to children about their families;
 - Supporting ways for children, in line with the WHO COVID-19 Detention Guideline, to maintain social connectedness, including in-person visits by family members, for example by extending visitation times and staggering visits to increase physical distancing or use of technology to facilitate interactions;
 - Waiving fees or costs to families that may be associated with mobile or digital resources required to facilitate communication between children and their families;
 - Considering the need for issuing special travel exemptions for parents and families to allow them to conduct visits.
- Monitor and adjust the number of staff and service providers available in facilities where children are deprived of liberty to maintain sufficient staff to provide proper care and protection of children and to prevent children from shouldering excessive responsibilities related to maintenance and upkeep of the facilities, in the event that staff and service providers are exposed, infected, or ill with the disease or otherwise prevented from continuing their duties.

Protecting Children from Violence, Abuse and Exploitation

- Authorities should take steps to protect the rights of children who are deprived of their liberty and to minimize vulnerabilities to violence, abuse, neglect and exploitation which may be exacerbated by the disease or containment measures, or which may be a secondary consequence. Authorities should:
 - Develop a comprehensive coordinated plan to ensure well managed implementation and response across government to the COVID-19 pandemic and children in detention, that includes designation of child justice and social services as essential allowing continuity of such services. Cooperation and collaboration should

include justice, security, interior, immigration, finance, health, social welfare and education ministries and any other relevant authorities with authority over social and health measures (including mental health and psychosocial care), resources, legal and other support, and contact with families and communities;

- Involve children in the process of developing the plan so as to effectuate their right to express their views and participate in decisions that affect them;
- Establish and implement child safeguarding policies, procedures, and complaint mechanisms, including for the prevention of violence, abuse and exploitation;
- Allow continued regular access and contact between children and their legal representatives, for example by extending visitation times and staggering visits to increase physical distancing or using technology to facilitate interactions, while still maintaining confidentiality of the interactions; use of mobile/digital resources to facilitate communication should be free of charge;
- Uphold due process and procedural guarantees, including allow court of administrative hearings related to children, pre-trial detention periods, and release to continue despite the COVID-19 emergency (for example, technology solutions and flexible work arrangements to enable Emergency Courts to sit);
- Allow inspection of all places where children are deprived of their liberty by independent international and national human rights bodies, health, and child protection authorities even in facilities and locations where infection may be present and including where individuals may be isolated for health reasons.

Recommendations from Office of the United Nations High Commissioner for Human Rights & World Health Organization ¹⁵⁷

Engagement & Analysis

- Analyze the situation of detention centers and places where persons are deprived of their liberty, including juvenile detention and rehabilitation centers, taking into consideration the specific context, to the right to non-discrimination and equality in access to healthcare and health services, paying particular attention to persons deprived of liberty belonging to vulnerable or high risk groups, such as the elderly, women, children, and persons with disabilities amongst others. Since there is a high risk of the disease affecting persons in these closed or restricted settings, initiate a discussion with the stakeholders on the continued legality, necessity and proportionality of such measures given the current risks, and possible alternatives.

Advocacy

- Public authorities should take immediate steps to address prison overcrowding, including measures to respect WHO guidance on social distancing and other health measures. Release of individuals, including children, persons with underlying health conditions, persons with low risk profiles and who have committed minor and petty offences, persons with imminent release dates and those detained for offences not recognized under international law, should be prioritized. Release of children needs to be done in consultation and partnership with child protection actors and relevant government authorities to ensure adequate care arrangements.

¹⁵⁷ Office of the United Nation High Commissioner for Human Rights and the World Health Organization, “Interim Guidance COVID-19: Focus on Persons Deprived of Their Liberty” (March 2020) at 1-6, online (pdf): *Inter-Agency Standing Committee* <interagencystandingcommittee.org/system/files/2020-03/IASC%20Interim%20Guidance%20on%20COVID-19%20-%20Focus%20on%20Persons%20Deprived%20of%20Their%20Liberty.pdf>.

- In the case of children, authorities have the responsibility to ensure that the best interests of each individual child is the primary consideration and it is widely argued that detention even as a last resort, is never in the best interests of a child, especially when referring to child immigration detention. Thus, non-custodial alternatives to detention, which are family based or community based, should be favored for any person under 18 years, especially in the context of COVID-19 decongestion measures and increased risks to the right to life of all detainees and personnel.

Health

- International standards highlight that states should ensure that persons in detention have access to the same standard of health care as is available in the community, and that this applies to all persons regardless of citizenship, nationality or migration status.
- Any detention measures introduced for the purpose of managing risks to public health, including when applied to people arriving from other countries, must be necessary, proportionate and subject to regular review; must not be arbitrary or discriminatory, must be based on an individual assessment, must be authorized by law in accordance with applicable due process and procedural safeguards, must be for a limited time period and subject to periodic review, and must otherwise be in line with international standards. Health concerns do not justify the systematic detention of individuals or groups of migrants, including refugees.
- Persons deprived of their liberty should receive a medical examination upon admission, and thereafter-medical care and treatment shall be provided whenever necessary. The purpose of health screening is to protect the detainee's health, detention centers staff as well as other detainees and to ensure that any illnesses are dealt with as soon as possible to avoid the spread of the virus. All detainees should have access to medical care and treatment without discrimination. Persons deprived of liberty who use drugs and receive harm reduction services should be allowed continued access to such services. Pro-active measures and monitoring should be put in place to ensure that essential personal hygiene items such as soap and sanitizer, as well as menstrual items for women and girls, are made available at no cost throughout their continued use beyond initial distribution point.
- In suspected or confirmed cases of COVID-19 all persons deprived of their liberty should be able to access healthcare, including urgent, specialised health care, without undue delay. Suspected case(s) should be isolated in dignified conditions away from general population and measures should be put in place to mitigate violence or stigmatization against suspected cases. Detention centres' administrations should develop close links with community health services and other health-care providers.
- If people are released, medical screening and measures should be taken to ensure that ill people are taken care of and proper follow up, including health monitoring, is provided.
- Particular attention should be given to specific health needs of older persons and persons with underlying health conditions or heightened vulnerability, children in detention and those in detention with their mother, pregnant women, elderly and persons with disabilities. Health care services should be provided to gender specific needs at all times.
- Special attention to mental health issues among persons deprived of their liberty. The need for routine mental health and psychosocial support shall be provided immediately.
- Sexual and Reproductive Health shall be provided as part of routine health care to persons deprived of their liberty.
- Ensure that rationing of health responses and allocation decisions are guided by human rights standards based on clinical status and do not discriminate based on any other selection criteria, such as age, gender, social or ethnic affiliation, and disability.

Housing

- For those who may not have a residence upon release, the state should take measures to provide adequate housing and reasonable accommodation, which may require the implementation of extraordinary measures as appropriate in a state of emergency, including using vacant and abandoned units and available short-term rentals. In the case of unaccompanied children, special measures to safeguard their care and protection must be under-taken.

Information

- Information on preventive health measures should be provided to all persons deprived of their liberty in a language and format they understand and that is accessible; and efforts should be made to improve the hygiene and the cleanliness of the detention places. Such measures should be gender, culture, abilities and age sensitive.
- Information on mitigating measures provided to persons deprived of their liberty as well as their families should be in languages and formats that are understandable and accessible to all, clear, and accurate. They should explain the measures that the detention center is taking to protect the health of persons deprived of their liberty and the public at large. Any restrictions on rights and freedoms must be consistent with international human rights norms and principles, including legality, proportionality, necessity and non-discrimination.

Measures taken to prevent outbreaks in detention centres

- While measures needed to prevent outbreaks of COVID-19 must be taken in places of detention, authorities need to ensure that all such measures respect human rights. The procedural guarantees protecting liberty of person may never be made subject to measures of derogation. In order to protect non-derogable rights, including the right to life and prohibition of torture, the right to take proceedings before a court to enable the court to decide without delay on the lawfulness of detention may not be restricted.
- Ability to meet with legal counsel must be maintained, and prison or detention authorities should ensure that lawyers can speak with their client confidentially. Suspending hearings may in fact exacerbate the risk of coronavirus in places of detention. Even in an officially declared state of emergency, States may not deviate from fundamental principles of fair trial, including the presumption of innocence.
- Authorities should also guarantee maximum transparency in the adoption of preventive measures and a constant monitoring of their application. The substitution of in-person family visits by other measures, such as videoconferences, electronic communication and increased telephone communications (pay phones or mobile phones) may require sustained organizational effort from the place of detention administration. Any interference with privacy or family must not be arbitrary or unlawful.
- Particular efforts should be made to ensure family visits and alternatives are provided to all detained children and other vulnerable persons in detention, including person with disabilities who may not otherwise be able to maintain contact through other means with their families.
- Isolation or quarantine measures in places of detention must be legal, proportional and necessary, time-bound, subject to review and should not result in de facto solitary confinement. Information about the whereabouts and condition of detainees should be communicated to the families. Quarantines should be time limited and should only be imposed if no alternative protective measure can be taken by authorities to prevent or respond to the spread of the infection.
- Under no circumstances shall the isolation or quarantine be used to justify discrimination or the imposition of harsher or less adequate conditions on a particular group including children.

CHILDREN LIVING SEPARATED FROM THEIR FAMILIES OR IN ALTERNATIVE LIVING ARRANGEMENTS

COVID-19's Impacts on Children Living Separated from Their Families

This pandemic has increased opportunities for children to be separated from their parents. Reasons for this might include the child and/or their parents being hospitalized, being required to quarantine or self-isolate, or being separated because of border/travel restrictions.¹⁵⁸ Any of these could potentially separate children from their parents or caregivers for indefinite periods of time. This presents particularly challenges for children whose parents are separated or divorced as they may live in different jurisdiction. This could cause custody and visitation issues.

COVID-19's Impacts on Children Living in Alternative Living Arrangements

There may also be risks for children already living in alternative care arrangements. For example, it is not uncommon for children not living with their parents to live with extended family members. Oftentimes these extended family members are grandparents or older adults. Carers in this age group are particularly vulnerable to COVID-19 and may relinquish care of children for health or financial reasons.¹⁵⁹ Foster parents may relinquish care of their foster children for similar reasons. For children living in residential care, there is a risk that their residential care facilities may close. This could cause issues if the child and their family are not yet prepared for the child's early transition home. Examples of challenges that could emerge from this rapid transition include emotional stress, exacerbated health problems, lack of access to education, and increased risk of abuse.¹⁶⁰ Children in alternative care may also experience frustration if they are in lockdown in a placement that they do not like. They are also more prone to infection because of the close proximity to others that such a living environment creates.¹⁶¹ This is

¹⁵⁸ UNICEF Canada and One Youth, *supra* note 1 at 1.

¹⁵⁹ Better Care Network, *supra* note 145 at 3.

¹⁶⁰ Philip S Goldman et al, "The implications of COVID-19 for the care of children living in residential institutions" (21 April 2020) at 1, online (pdf): *The Lancet* <alliancecpha.org/en/system/tdf/library/attachments/covid_and_care.pdf?file=1&type=node&id=37882>.

¹⁶¹ *Ibid*, at 3.

particularly concerning for children living with disabilities, as they are more likely to be susceptible to the virus.¹⁶² These concerns may disproportionately affect Indigenous children. Although Aboriginal children under 14 years only make up 7% of all children this age in Canada, nearly half (48%) of all foster children under 14 years are Aboriginal.¹⁶³ Aboriginal children are also two times more likely to live with their grandparents than non-Aboriginal children.¹⁶⁴ Other risks include those pertaining to youth living on the streets, youth transitioning out of care, refugees, and immigrants. These youth might experience social isolation and have difficulty accessing services and other resources because of program reductions or shutdowns. These groups are already highly vulnerable and the challenges presented by COVID-19 may serve to further isolate them.¹⁶⁵

Human Rights Issues

There are several UNCRC articles relevant to the issues discussed above. Article 9 states:

1. States Parties shall ensure that a child shall not be separated from his or her parents against their will, except when competent authorities subject to judicial review determine, in accordance with applicable law and procedures, that such separation is necessary for the best interest of the child. Such determination may be necessary in a particular case such as one involving abuse or neglect of the child by the parents, or one where the parents are living separately and a decision must be made as to the child's place of residence.
2. In any proceedings pursuant to paragraph 1 of the present article, all interested parties shall be given an opportunity to participate in the proceedings and make their views known.
3. 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.
4. Where such separation results from any action initiated by a State Party, such as the detention, imprisonment, exile, deportation or death (including death arising from any cause while the person is in the custody of the State) of one or both parents or of the child, that State Party shall, upon request, provide the parents, the child or, if appropriate, another member of the family with

¹⁶² *Ibid.*

¹⁶³ Annie Turner, "Insights on Canadian Society: Living arrangements of Aboriginal children aged 14 and under" (13 April 2016) online: *Statistics Canada* <www150.statcan.gc.ca/n1/pub/75-006-x/2016001/article/14547-eng.htm>.

¹⁶⁴ *Ibid.*

¹⁶⁵ *Ibid.*

the essential information concerning the whereabouts of the absent members(s) of the family unless the provision of the information would be detrimental to the well-being of the child. States Parties shall further ensure that the submission of such a request shall of itself entail no adverse consequences for the person(s) concerned.¹⁶⁶

Article 10 says:

1. In accordance with the obligation of States Parties under article 9, paragraph 1, 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. States Parties shall further ensure that the submission of such a request shall entail no adverse consequences for the applicants and for the members of their family.
2. A child whose parents reside in different States shall have the right to maintain on a regular basis, save in exceptional circumstances personal relations and direct contacts with both parents. Towards that end and in accordance with the obligation of States Parties under article 9, paragraph 1, States Parties shall respect the right of the child and his or her parents to leave any country, including their own, and to enter their own country. The right to leave any country shall be subject only to such restrictions as are prescribed by law and which are necessary to protect the national security, public order (*ordre public*), public health or morals or the rights and freedoms of others and are consistent with the other rights recognized in the present Convention.¹⁶⁷

Finally, article 20 states:

1. A child temporarily or permanently deprived of his or her family environment, or in whose own best interests cannot be allowed to remain in that environment, shall be entitled to special protection and assistance provided by the State.
2. States Parties shall in accordance with their national laws ensure alternative care for such a child.
3. Such care could include, *inter alia*, foster placement, *kafalah* of Islamic law, adoption or if necessary placement in suitable institutions for the care of children. When considering solutions, due regard shall be paid to the desirability of continuity in a child's upbringing and to the child's ethnic, religious, cultural and linguistic background.¹⁶⁸

¹⁶⁶ UNCRC, *supra* note 3 article 9.

¹⁶⁷ *Ibid* article 10.

¹⁶⁸ *Ibid* article 20.

Each circumstance involving a child being separated from their parents during this pandemic is unique, however there are responses from States in these situations that should be constant. There are circumstances where it is lawful for children to be separated from their parents against their will. However, these separations must be in the “best interest of the child” (article 9.1). If children are separated from their parents, they are “entitled to protection and assistance provided by the State” (article 20.1). Also, if a child is separated from his or her parents, the child has the right to maintain a relationship with that parent as long as this is within the best interest of the child (article 9.2). For children living in separate jurisdictions from their parents, movement across jurisdictions “for the purpose of family reunification shall be dealt with by States Parties in a positive, humane and expeditious manner” (article 10.1). These children also have the right to maintain “save in exceptional circumstances personal relations and direct contacts with both parents” (article 10.2). As discussed above, these rights have all been put at risk during this crisis and must be balanced against protecting children’s health. The Child Welfare League of Canada recognizes that limitations may need to be placed on these rights during health emergencies like the COVID-19 pandemic:

While some limits on the rights of children, youth and families may be necessary in a state of emergency – such as the COVID-19 pandemic – these restrictions must be reasonable, justifiable and based in judicious decision-making. All situations must be evaluated individually and any limits should be time bound, with regular review periods put in place to modify, ease or release restrictions as soon as possible. There should be exceptions made on a case-by-case basis where possible.¹⁶⁹

Despite the challenges presented by COVID-19, the best interest of the child must always be considered when making policy decisions that impact children separated from their families. Recommendations on how to protect these rights are outlined below.

¹⁶⁹ Child Welfare League of Canada, “Guidance note: Maintaining connections for children and youth in the context of COVID-19” (17 June 2020) at 2, online (pdf): *Child Welfare League of Canada* <7f9b59af-af92-41cd-8e6c-aa2870f170de.filesusr.com/ugd/f54667_7e444bcaf5ca4e91b3d0f17e02b775fd.pdf>.

Recommendations

There is already some case law on custody issues during this pandemic. In *Ribeiro v Wright*, 2020 ONSC 1829, one parent filed a motion to suspend the other parent’s in-person access to their shared child. The Court said the following:

A blanket policy that children should never leave their primary residence – even to visit their other parent – is inconsistent with a comprehensive analysis of the best interests of the child. In troubling and disorienting times, children need the love, guidance and emotional support of *both* parents, now more than ever.¹⁷⁰

The Court went on to provide the following guidelines for child visitations in light of the COVID-19 crisis:¹⁷¹

- In most situations there should be a presumption that existing parenting arrangements and schedules should continue, subject to whatever modifications may be necessary to ensure that all COVID-19 precautions are adhered to – including strict social distancing.
- In some cases, custodial or access parents may have to forego their times with a child, if a parent is subject to some specific personal restriction (for example under self-isolation as a result of recent travel, personal illness, or exposure to illness).
- There will be zero tolerance for any parent who recklessly exposes a child (or members of the child’s household) to any COVID-19 risk.
- Transitional arrangements at exchange times may create their own issues, and this may result in changes to transportation exchange locations, or any terms of supervision.
- In blended family situations, parents will need assurance that COVID-19 precautions are being maintained in relation to each person who spends any amount of time in a household—including children of former or new relationships.
- No matter how difficult the challenge, for the sake of the child we have to find ways to maintain important parental relationships – and above all, we have to find ways to do it safely.

¹⁷⁰ *Ribeiro v Wright*, 2020 ONSC 1829 at para 10.

¹⁷¹ WestlawNext Canada, “Legal issues and considerations arising from Covid-19 Pandemic by Practice Area” (30 July 2020) at 32-33, online (pdf): *Westlaw* <westlawnextcanada.com/DynamicData/AttachedDocs/COVID-19/Legal_Issues_and_Considerations_arising_from_COVID-19_Pandemic_by_Practice_Area.pdf>.

Recommendations from the Child Welfare League of Canada ¹⁷²

- Designate child welfare and protection as essential services.
- Allow service providers, alternative care providers, and social workers the flexibility to be creative in arranging visits for children and youth with parents or significant others, while respecting health guidelines.
- Cover the cost of technology for children, youth, families and Elders so that significant and frequent connections can be maintained (i.e. tablets with data, laptops, wi-fi).
- Fund and maintain existing service providers and communities, enabling them to offer free and readily accessible online mental health supports, including access to Elders, counselling, and psychiatry.
- Ensure no person is forced to transition out of care during the pandemic and offer supports and services immediately and unconditionally so that young people can maintain significant connections.
- Ensure poverty reduction efforts are robust and that barriers to accessing provincial, territorial and federal benefits are eliminated for those who are in the most precarious situations.
- Comply with Human Rights Tribunal rulings and immediately end the inequitable funding of child and family services in First Nations communities so that they are better able to meet the needs of children, youth and families.

Recommendations from Human Rights Watch ¹⁷³

- Governments should implement family tracing systems to identify extended family members who might care for children who have lost their parents or guardians to COVID-19.
- Governments should avoid institutionalizing children without caregivers, giving priority to family-based care, including extended family (kinship) care.
- Governments should strengthen and support a network of trained foster carers/foster families to provide alternative care for separated and unaccompanied children, including a network of emergency carers who are ready to accept children on short notice for limited periods of time.
- Governments should take urgent steps to provide psychosocial care, food and material assistance to children orphaned or left unaccompanied due to COVID-19
- Governments should ensure an adequate number of social workers to identify the specific needs of orphaned and unaccompanied children, provide assistance, and closely monitor foster and other alternative care placements for potential abuse or exploitation.
- Governments should ensure care for children left alone without adequate care due to the hospitalization or death of a parent or caregiver.

¹⁷² Child Welfare League of Canada, “Guidance note: Maintaining connections for children and youth in the context of COVID-19” (17 June 2020) at 5, online (pdf): *Child Welfare League of Canada* <7f9b59af-af92-41cd-8e6c-aa2870f170de.filesusr.com/ugd/f54667_7e444bcacf5ca4e91b3d0f17e02b775fd.pdf>.

¹⁷³ Human Rights Watch, *supra* note 20.

*Recommendations from Better Care Network, Alliance for Child Protection in Humanitarian Action, and UNICEF*¹⁷⁴

Keeping Children Safe in Family Care

- Provide knowledge to families, caregivers, and children on how to prevent the spread of COVID-19, including in situations with limited water/soap access, and make available resources such as hygiene kits, and ensure that knowledge and resources are accessible to children and/or parents with disabilities.
- Disseminate disability inclusive messages on self-care, mental health and psychosocial support, positive discipline, children's behaviours, and home activities. Pay special attention to ensure that messages are accessible to persons with disabilities.
- Recognizing increased health risks to older adults, ensure those who care for children are prioritized for support and resources.
- Encourage and help families to plan for who will care for children if a parent or caregiver becomes ill or must care for an ill family member and encourage family members and relatives to offer support from afar, using available technology.
- Eliminate barriers to accessing benefits by removing conditionality associated with cash transfers and promoting access to funds outside of the populations' habitual place of residence.
- Inform families, teachers, health and other community workers on how to identify and respond to those children with heightened protection needs and those at increased risk of separation, including those with disabilities, due to death or illness in the family.
- For children already known to be at risk of separation before the pre-pandemic, social service workers should provide continuing support and follow up through regular phone or other virtual contact.
- Work with community leaders, including faith leaders, to combat stigma and rumours about COVID-19 and those who are ill, have been exposed or have survived the illness, and to support them to disseminate basic facts about the symptoms, modes of transmission, and recovery (using radio, megaphone/social media etc.).
- Identify and include migrant, refugee, stateless and internally displaced children and families, including those without documentation, in key priority actions such as access to health services for prevention, treatment and testing, social protection programmes, child friendly information dissemination and referral mechanisms including online support where possible.

Protection of Children in Alternative Care

- Emergency plans covering alternative care services should be developed by the child welfare authorities in partnership with service providers and community leaders. Planning should take into account the fluidity and likely duration of the emergency (up to 18 months). In contexts where child are not/no longer operating, child protection practitioners should work with community leaders and providers, including community health and education workers to develop such plans.
- These plans should include at a minimum:
- Clear policy statement prioritizing family-based care alternatives and prevention of separation over recourse to residential care should be circulated to health care facilities, police stations, courts, local councils and community child protection structures/mechanisms.

¹⁷⁴ Better Care Network, *supra* note 145 at 2-11.

- Alternative care services should be classified as 'essential services' within government emergency management frameworks.
- Revised gatekeeping procedures should include online and telephone screening of referrals, assessment of necessity and suitability of care placement and authorization of placement and monitoring by child welfare authorities.
- Restrictions or prohibitions should be placed upon the irregular admission of children into residential care facilities during the emergency. Service providers should be required to immediately notify authorities if a child is brought to their facility and not through formal gatekeeping mechanisms.
- Local authorities should make available Standard Operating Procedures (SOP) to address interim care needs of separated or unaccompanied children, including clear guidance on steps to be taken in the event such a child has been exposed or has symptoms of the virus and requires a period of isolation. Particular attention should be paid to prevent unnecessary recourse to residential care in response to COVID-19, including for children with disabilities.
- Child welfare authorities should issue a moratorium on the establishment of new residential care facilities which should be widely communicated along with directives and messages that reinforce existing or modified gatekeeping mechanisms for new referrals to existing facilities.
- Each residential care facility should be classified as a single unit of residence for the purpose of government regulations/directives for self-isolation and clear guidance should be distributed to all service providers on requirements for social distancing, isolation and quarantine measures within residential care settings.
- Residential care facilities should not be closed rapidly and without effective care and support plans in place for each child.
- Governments, in partnership with relevant child protection actors, should secure/guarantee the supply chains of essential goods (food, hygiene products and essential/basic medicine) and critical services (including those specifically needed for children with disabilities) to alternative care service providers in the event purchasing and travel restrictions are imposed, or goods become scarce and difficult to source through ordinary means.
- Review and identification of key personnel/staff should be undertaken, including case workers and essential resources needed for this period of the emergency, with plans for temporary replacement staff for those who need to self-quarantine, and additional flexible funds for child protection authorities to enable rapid adaptation of systems and services in response to the crisis.
- Standard Operating Procedures (SOP) should be developed for the orderly family reintegration of children from alternative care who can be cared for by their families and therefore whose reintegration should be prioritised. This must include documentation of where they child returned to and contact information.
- Strengthen capacities of Hot lines and child helplines, for children, families and care facilities to report any case of abuse or neglect.
- Other priority actions include:
- All children, caregivers and staff should receive relevant COVID-19 health and safety training, taking into account child friendly messaging and delivery modes accessible to children with disabilities.

- Adequate personal protective equipment (PPE) should also be provided to caregivers working with children who have chronic illnesses or an underlying health condition or who have been exposed to the virus, as well as in cases where there are other individuals at risk within the home or care setting.
- Kinship and foster families should be given additional material support, including financial, health, and education, given the additional expense of caring for a child at a time of crisis.
- Identifying and securing sources of additional support in conjunction with relevant health authorities to ensure alternative care placements are able to meet the support needs of children with disabilities, special needs and/or those with underlying health issues who may be disproportionately affected by COVID-19, including in the event hospitalisation is required.
- Foster care providers should review all cases where reintegration of the child in his/her family is pending. A determination should be made whether it is still feasible and safe for reintegration to proceed and, if it is in the child's best interests, whether it can be brought forward. The support needs of the family should be identified and met to enable them to care appropriately for this child.
- Outreach to existing and new foster families should be carried out to determine if they would be willing to care for another child, with appropriate support if needed. Experienced foster families should be identified in particular for the placement of children who face particular risks, such as babies and infants, children and teens who have experienced violence, children with disabilities who have particular medical or other care needs, migrant and refugee children who cannot be placed with relatives, among others.
- Monitoring of reintegrated children should use new modalities of case management given the restrictions placed on travel and social contact.
- Family connections and contact should be facilitated remotely for children in foster or residential care, including seeking involvement of primary caregivers in key decisions about the child. Every effort needs to be made to ensure modes of communication are accessible to children and caregivers with disabilities.
- Child protection practitioners should work with community leaders, local health workers and education workers to identify high risk family-based care placements. In the current context, risk factors should also include increased vulnerability of the caregiver or the child to falling ill if exposed to the virus; as well possible placement breakdown due to reduced capacity of the caregiver to care for the child as a result of loss of livelihood, housing, access to social services, or stigma and discrimination.
- In high risk situations, case workers and their organizations should ensure, where possible, that virtual contact occurs on a regular basis (e.g., three times per week) and that support and contingency plans are developed ahead of time. Plans should be developed together with the caregiver and child, parents and other family members. Plans should also be discussed with (and agreed to) in advance by potential alternate caregivers.
- For high risk vulnerable families with no phone or internet connection, case workers with the appropriate protective measures should still continue to visit the family following agreed public health guidance and procedures.
- Where a child has complex needs, including emotional and behavioural challenges, is at risk of exploitation, or there is a particular crisis, such as a death in the family, or the child's carer becomes ill, referral to family group conference services where available may be needed. Local authorities are starting to convene virtual family group conferences, for example via WeChat, WhatsApp, Skype or Zoom, to agree interim plans and arrangements. For examples of information about family group conferences.

What must be done to protect children in street situations

- Governments and civil society organizations should ensure that drop-in centers and similar such facilities are designated as essential services, and are equipped with information on how to prevent the spread of COVID-19, as well as essential services such as health, hygiene, protection, education, and nutrition.
- Police should be directed to ensure that children in street situations are not arrested for not self-isolating, and instead, they should be supported with access to shelters or other adequate alternative housing, and be connected to health, child protection and other support services, including through child helplines.

Supporting young people who have left care and those living independently

- Case workers should contact as many care leavers as possible, with special attention to those care leavers who live alone, and conduct preliminary enquiries to check on their wellbeing, assessing their support needs and providing them with basic information on protection from COVID-19.
- Organizations should prioritize care leavers who have not secured accommodation and secured livelihood options, providing them with targeted emergency support. Case workers should work with their parent organizations to ensure that arrangements such as vouchers are made available for youth to purchase essential supplies who will face financial insecurity in terms of access to cash for their daily need.
- Organizations should enable access to mental health and psychosocial support, including through online mental health support services and by facilitating regular contact with carers through phone or online services.
- Case workers should help youth living independently, especially in collective/group lodging, to collectively agree on certain ground rules to ensure smooth and effective implementation of the social distancing, isolation, and quarantine requirements.
- Advocacy services and mutual aid groups often play a crucial role offering practical support, guidance and mentorship. Increased funding to these organizations should be provided to enable them to develop online and phone support and expand their reach. For example, through moderated WhatsApp groups, where youth could be supported to establish “buddy systems” with their peers to keep in touch, check over each other’s well-being, health, and provide support as necessary.

*Recommendations from UNICEF*¹⁷⁵

- Develop an emergency plan that is multi-sectoral, including material or financial support for families required to isolate or quarantine and for families providing alternative care for children, assistance to families in planning advance directives for any possible caregiver illness, and provide necessary training, that describes the role and responsibilities of key stakeholders, including community structures, community level protection actors, and social service and child welfare workforce, as well as communication and reporting channels.
- Select locations and design facilities, services and information to be accessible and disability inclusive. Doing so at the planning and design phase will result in lower overall costs associated with such measures.
- Develop and disseminate messages to families through trusted sources that encourage them to identify alternative kinship or other family-based care for children in case caregivers become incapacitated or are otherwise unable to care for children.

¹⁷⁵ UNICEF, “Children Isolation and Quarantine: Preventing Family Separation and Other Child Protection Considerations during the COVID-19 Pandemic” (1 June 2020) at 5-6, online (pdf): *Better Care Network* <bettercarenetwork.org/sites/default/files/2020-06/Children%2C%20Isolation%20and%20Quarantine%20-%20Preventing%20Family%20Separation%20and%20other%20CP%20Considerations%20during%20COVID-19%20-Field%20Test.pdf>.

- Support community protection focal points and caseworkers to prepare families to create alternative care plans that identify, in advance of an emergency, who should temporarily care for their child(ren) if their primary caregiver becomes ill with COVID-19. In devising these plans, the child's views should be considered. Children living with primary caregivers who are elderly, disabled, or have underlying health conditions are particularly at risk of family separation due to caregiver illness and should be prioritized.
- Establish protocols that prioritize family unity and children's best interests when making determinations about quarantine and isolation of caregivers and children, and that result in separation of children from their families only as a last resort.
- Coordinate with health actors to establish a standard operating procedure (SOP) for registration and confidential data collection systems for when children or caregivers are admitted for quarantine, isolation or treatment, including details of the child's name, family name(s), date of birth, and place of origin or current residence, address, or home location, the names and contact information of the child's primary caregivers, and names and contact details of other family members who could provide alternative care if needed. If no family members are nearby or have contact details available, the name of a trusted neighbor or friend should be sought. Such SOPs should include data protection and data sharing protocols timely agreed and endorsed by both health and protection actors.
- Train and provide necessary resources and support to clinical health care workers so that they can provide developmentally appropriate nurturing and protective care to any children being treated in the health care facility or accompanying their caregiver.
- For every isolation, quarantine, or treatment center, assign a social worker or designate and train a health center staff member (at least one per facility per shift) as the emergency focal point for child protection issues that may arise. The designated staff should be trained on child protection and liaise with the primary staff members responsible for child protection case management in the facility.
- Recruit and train families who are at lower risk of poor outcomes from infection, without underlying health conditions, and with sufficient space in their homes to become trained foster or alternative care families who can be mobilized to temporarily provide nurturing care for children who may be separated from their families. Conduct and update mappings for such caregiver networks.
- Referral pathways and service mapping for children, including child protection case management and family tracing and reunification, should be developed or adapted and disseminated widely, ensuring safe, accessible entry points.
- Establish procedures to support remote or virtual contact between children and caregivers who are physically separated due to quarantine, isolation or treatment. This could include safe options for visiting (if proper precautions are in place), electronic media such as Skype, telephone or WhatsApp, or the exchange of letters, photos or videos. Maintaining contact can help children remain connected with their families and allow caregivers to provide nurture and care even if it is through virtual means. This connection can help reduce anxiety or stress that children may experience if they are not in touch with their caregivers.
- Provide social workers and other essential workers with targeted safe childcare, mental health and psychosocial and other services to lessen the burden and potential separation risk for those families and support their safety and wellness.
- Reduce the risk of stigma and rejection of children by establishing, as early as possible, engagement and communities sensitization to reduce any stigma or discrimination that children may face as a result of COVID-19. Information should be in a format that is easily understandable (i.e.: orally, simple printed materials, or graphic materials) that explains the authorized messages regarding COVID-19 recovery. Information about a child's health status should be provided to caregivers upon the child's placement or return.

GENERAL RECOMMENDATIONS

General Recommendations from the Committee on the Rights of the Child¹⁷⁶

1. **Consider the health, social, educational, economic and recreational impacts of the pandemic on the rights of the child.** Although initially declared for short terms, it becomes clear that declarations of States of emergencies and/or disaster may be maintained for longer periods, leading to longer periods of restrictions on the enjoyment of human rights. The Committee recognizes that in crisis situations, international human rights law exceptionally permits measures that may restrict the enjoyment of certain human rights in order to protect public health. However, such restrictions must be imposed only when necessary, be proportionate and kept to an absolute minimum. Additionally, while acknowledging that the COVID-19 pandemic may have a significant and adverse impact on the availability of financial resources, these difficulties should not be regarded as an impediment to the implementation of the Convention. Nevertheless, States should ensure that responses to the pandemic, including restrictions and decisions on allocation of resources, reflect the principle of the best interests of the child.
2. **Explore alternative and creative solutions for children to enjoy their rights to rest, leisure, recreation and cultural and artistic activities.** Such solutions should include supervised outdoor activities at least once a day which respect physical distance protocols and other hygiene standards, and child-friendly cultural and artistic activities on TV, radio and online.
3. **Ensure that online learning does not exacerbate existing inequalities or replace student-teacher interaction.** Online learning is a creative alternative to classroom learning but poses challenges for children who have limited or no access to technology or the Internet or do not have adequate parental support. Alternative solutions should be available for such children to benefit from the guidance and support provided by teachers.
4. **Activate immediate measures to ensure that children are fed nutritious food** during the period of emergency, disaster or lockdown, as many children receive their only nutritious meal through school feeding schemes.
5. **Maintain the provision of basic services for children including healthcare, water, sanitation and birth registration.** Despite the increasing pressure on health systems and the scarcity of resources, children should not be denied access to health care, including to testing and a potential future vaccine, to COVID-19 – related and COVID-19 – unrelated medical treatment, mental health services and treatment for pre-existing conditions. Children should also have access to clean water and sanitation facilities during the period of emergency, disaster or lockdown. Birth registration services should not be suspended.
6. **Define core child protection services as essential and ensure that they remain functioning and available, including home visits when necessary, and provide professional mental health services for children living in lockdown.** Confinement may expose children to increased physical and psychological violence at home, or force children to stay in homes that are overcrowded and lack the minimum conditions of habitability. Children with disabilities and behavioural problems, as well as their families, may face additional difficulties behind closed doors. States should strengthen phone and online reporting and referral systems as well as sensitization and awareness activities through TV, radio and online channels. Strategies to mitigate the economic and social impact of the COVID-19 pandemic should also include specific measures to protect children, particularly those living in poverty and lacking access to adequate housing.

¹⁷⁶ Committee on the Rights of the Child, “Committee on the Rights of the Child warns of grave physical, emotional and psychological effect of the COVID-19 pandemic on children and calls on States to protect the rights of children” (8 April 2020) at 1-3, online: *United Nations Human Rights Office of the High Commissioner* <[yjlc.uk/wp-content/uploads/2020/04/CRC-statement-INT_CRC_STA_9095_E1.pdf](http://www.unhcr.org/wp-content/uploads/2020/04/CRC-statement-INT_CRC_STA_9095_E1.pdf)>.

7. **Protect children whose vulnerability is further increased by the exceptional circumstances caused by the pandemic.** These include children with disabilities; children living in poverty; children in street situations; migrant, asylum-seeking, refugee and internally displaced children; minority and indigenous children; children with underlying health conditions including HIV/AIDS; children deprived of their liberty or confined in police lock-up facilities, prisons, secure care centres, migrant detention centres or camps; and children living in institutions. States should respect the right of every child to non-discrimination in its measures to address the COVID-19 pandemic as well as take targeted measures to protect children in vulnerable situations.
8. **Release children in all forms of detention, whenever possible, and provide children who cannot be released with the means to maintain regular contact with their families.** Many States have adopted measures to restrict visits and contact opportunities for children living in institutions or deprived of their liberty, including children confined in police institutions, prisons, secure centres, migration detention centres or camps. While these restrictive measures can be seen as necessary in the short term, over long periods they will have a marked negative effect on children. Children should at all times be allowed to maintain regular contact with their families, and if not in person, through electronic communication or telephone. If the period of emergency, disaster or State-ordered confinement is extended, consideration should be given to reassessing the measures that prohibit such visits. Children in migration situations should not be detained nor separated from their parents if accompanied.
9. **Prevent the arrest or detention of children for violating State guidance and directives relating to COVID-19,** and ensure that any child who was arrested or detained is immediately returned to his or her family.
10. **Disseminate accurate information about COVID-19 and how to prevent infection in languages and formats that are child-friendly and accessible to all children including** children with disabilities, migrant children and children with limited access to the Internet.
11. **Provide opportunities for children’s views to be heard and taken into account in decision-making processes on the pandemic.** Children should understand what is happening and feel that they are taking part in the decisions that are being made in response to the pandemic.

General Recommendations from UNICEF Canada for Canada’s Governments¹⁷⁷

- **Make decisions using Child Rights Impact Assessment:** Government stimulus and response at all stages of the pandemic must consider the broad range of possible impacts on children, which extend beyond health protection, taking steps to balance risks, avoid or soften negative impacts and listen directly to children and youth to support their coping strategies, priorities and ideas to improve responses.
- **Listen to young people:** UNICEF Canada and our partners are supporting young people to tell decision-makers what it is like to grow up during this pandemic. U-Report, Kids of Canada and an Open Letter to Canada from Youth are some of the ways to safely and respectfully listen to young people, and provide a real-time evidence base that can help guide decision-makers. We ask every elected official to have regular, virtual town halls with diverse young people to check in on them and take their recommendations into account.
- **Appoint a Special Council for Children and Youth** to help inform and coordinate government plans from crisis response to recovery.
- **Launch a Comprehensive Child and Youth Reimagine and Recover Plan** at every level of government to give this generation support to recover to a better situation on the other side of the pandemic.

¹⁷⁷ UNICEF Canada and One Youth, *supra* note 1 at 2.

CONCLUSION

The COVID-19 crisis has posed many risks to children and youth's human rights as outlined by the UNCRC. While this discussion of these risks is not exhaustive, the main risks as identified by major national and international organizations have been summarized. These risks include those related to children's rights to health, play, education, protection from maltreatment, online safety, liberty, and issues related to alternative living arrangements. Throughout this paper, detailed policy recommendations and guidelines from leading human rights organizations on how to mitigate these risks were included. These recommendations could be helpful for governments as they develop policies to ensure children's rights are protected, both now and in any future pandemics.

Governments have a tremendous responsibility at all times to protect the rights and interests of children, but this is especially true during this time of increased vulnerability. The UNCRC and its mandates surrounding children's human rights issues should be at the forefront of Canadian policy makers' minds as they respond to the COVID-19 crisis. Despite the difficulties presented by this pandemic, it is imperative that children's best interests are protected. "What Canada does now will determine how children recover."¹⁷⁸

¹⁷⁸ UNICEF Canada "Canada's Kids in Lockdown: Impact of the COVID-19 Pandemic on the Well-being of Children in Canada" (May 2020) at 1-2, online (pdf): One Youth <oneyouth.unicef.ca/sites/default/files/2020-05/COVID19_RapidImpactAssessment_UNICEF%20Canada_May2020.pdf>.

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