

SEPARATED CHILDREN SEEKING ASYLUM IN CANADA

a discussion paper

ADAPTED FROM AN ORIGINAL REPORT RESEARCHED AND WRITTEN

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EXECUTIVE SUMMARY

This report is a limited, qualitative study of the situation of separated (or unaccompanied) asylum-seeking children in Canada. It is based mainly on interviews with agencies and individuals in British Columbia, Ontario and Québec, the Canadian provinces which together receive over 90% of refugee claimants. The report aims to provide a "snapshot" of the situation of separated children seeking asylum in Canada, to identify issues which deserve attention, and to make constructive proposals for further action.

UNHCR defines a separated child as one who is under the age of 18 and "*who is separated from both parents and [is] not being cared for by an adult who, by law or custom, is responsible to do so.*"¹

Such children are often called unaccompanied children, the term commonly used in Canada. Recently, UNHCR and other agencies have expressed a preference for the term "separated children," in order to emphasise the crucial fact of children's separation from their parents and the powerful effect this has on their welfare and security. While refugee agencies and child welfare professionals have long been aware of the plight of separated children, the issue gained national focus in Canada following the arrival of many separated Chinese children in 1999. The inherent tension between immigration enforcement imperatives and child welfare concerns was a recurrent theme throughout the research for this report.

Separated children have come to Canada seeking asylum at least since the Second World War. They have fled their countries for a variety of reasons, including war, forced military recruitment, persecution for ethnic, religious or political reasons, and other human rights abuses. Some children have witnessed the violent death or torture of their parents or siblings; others have been victims of sexual exploitation and other forms of abuse. At the international level, increased attention has been devoted to children's rights over the last decade. In 1989, the *Convention on the Rights of the Child* (CRC)² was adopted, and has now been ratified by 198 countries. In 1990, the U.N. convened the first World Summit for Children. The United Nations' deep concern about the impact of armed conflict on children led to the publication in 1996 of the landmark U.N. Study on the Impact of Armed Conflict on Children (known as the Machel study). In 1997, the Secretary General appointed a Special Representative on Children in Armed Conflict. In 1999, the International Labour Organization adopted a Convention on the Worst Forms of Child Labour, which came into force in November 2000. In 2000, the U.N. General Assembly adopted two new Protocols to the CRC, one addressing the problem of forced military recruitment of children and the other, the sale of children, child prostitution and child pornography. In September 2001, the U.N. General Assembly will hold its second special session on children, to evaluate progress made toward the goals set in 1990 at the first World Summit for Children.

UNHCR has called for special attention to the protection and care of refugee children, has appointed specialist staff for this purpose, issued guidelines for governmental and non-

¹ UNHCR, *Refugee Children: Guidelines on Protection and Care*, Geneva, 1994, p. 121.

² *Convention on the Rights of the Child*, U.N. General Assembly Resolution 44/25 of 20 November 1989.

governmental partners, produced training materials, and developed an in-house strategy to implement the findings of the Machel study as they relate to refugee children. Canada has been particularly active in promoting children's rights, and in 2000 convened a major International Conference on War Affected Children. Canada ratified the *Convention on the Rights of the Child* in 1991, although not all aspects of Canadian law and practice reflect the Convention. In February 2001, Canada submitted its second report on implementation of the Convention to the Committee on the Rights of the Child.

Canada receives a comparatively small proportion of the world's refugees. In the year 2000, Canada resettled just over 10,000 refugees from more than two dozen countries, of whom only a handful were separated children. Also in 2000, around 36,000 people applied for asylum in Canada. Data on refugee claims lodged by separated children is not consistently gathered and not necessarily comprehensive. According to the Immigration and Refugee Board (IRB), 671 claims of separated children were referred to the Board in 2000, compared with 404 in 1999. These figures may not reflect the real number of separated asylum-seeking children in Canada, since it seems likely that some children who appear to be "accompanied" are in fact separated from their parents or guardians, while others arrive in Canada alone but join parents or other relatives here. Indeed, the figure supplied by Citizenship and Immigration Canada (CIC) for claims by unaccompanied children during 1999 was 871; the corresponding figure for 2000 was 1,099.³

There are no specific guidelines in Canada to assist officials in identifying separated asylum-seeking children, or in providing appropriate care. Although immigration officials deal with children in the course of their daily work, they do not receive any specific training related to children, let alone to separated children. Regional variations exist, and it is not always clear which procedures and standards are applied. Children have at times been held in unsuitable environments, including in detention facilities intended for adults, and have not always fully enjoyed their basic rights to education, health care and recreation. It is not clear whether proper assessments and arrangements are made before separated children are removed from Canada.

Nonetheless, in Canada it has long been recognized that children may be refugees in their own right. Children are entitled to apply for refugee status, and their claims are considered by the Immigration and Refugee Board, the independent, quasi-judicial tribunal responsible for refugee status determination in Canada. In 1996, the IRB adopted *Guidelines on Child Refugee Claimants*⁴ (the IRB Children's Guidelines), covering procedural and evidentiary matters. While interviewees recognized that many IRB decision-makers (known as "Members") try to deal appropriately with child claimants, concerns were expressed about a lack of consistency in how such claims are handled. Other concerns included the effectiveness of the "designated representative" who by law must be named to represent a child's interests in the refugee proceedings; the appointment of IRB Members to hear

³ Provisional 1999 and 2000 CIC data on file at UNHCR Ottawa. The difference between CIC and IRB figures may be due to different definitions of unaccompanied or separated children.

⁴ Immigration and Refugee Board of Canada, *Child Refugee Claimants: Procedural and Evidentiary Issues*, September 30, 1996, Ottawa, available online at www.irb.gc.ca.

children's claims; the formality of IRB proceedings; and the need for specialized training of IRB Members, to help them to communicate with and question children appropriately.

Representatives of child welfare agencies drew attention to the strain they have faced as a result of large increases in the numbers of Canadian children taken into public care, and scarce resources to provide the needed services. This was seen as limiting their ability also to deal with separated asylum-seeking children. Non-Canadian children have traditionally been a minute proportion of those in public care, and agencies may lack the expertise required to address the needs of separated asylum-seeking children. Federal/provincial tensions have arisen over the costs of supporting refugee claimants in general, and over costs associated with the care of separated asylum-seeking children in particular. Considerable differences were found in the approach taken to care and guardianship in British Columbia, Ontario and Québec. Enhanced federal-provincial co-operation would be needed to establish a coherent national approach to separated children claiming refugee status in Canada.

This report contains 45 distinct recommendations which are numbered and highlighted in boxes throughout the report.

1. INTRODUCTION

In the summer of 1999, 134 separated Chinese children and adolescents aged 11 to 17 arrived in unseaworthy boats off Canada's west coast, along with 465 adults. Later in 1999 and in 2000, smaller groups of children, mostly Chinese, were apprehended while being transported clandestinely from Eastern Canada to the United States. Virtually all of these children applied for refugee status. The subsequent controversy surrounding their treatment led to greater attention to separated asylum-seeking children in general. In three provinces - British Columbia, Ontario and Québec - discussions have taken place on this subject involving federal and provincial authorities, NGOs and UNHCR, and have encompassed issues such as identification and referral, guardianship, care and placement, detention and return to country of origin. These discussions have been complicated by the fact that while the federal government has jurisdiction over matters relating to the immigration and refugee status, child welfare is a provincial responsibility, and each province has its own child welfare legislation.

UNHCR considered it opportune to look at the situation of separated children who are refugee claimants in Canada. This subject has been in the limelight recently in Europe, but to date there have been few studies on such children in Canada. UNHCR has produced this report in an effort to stimulate broader debate on Canada's national policies and international commitments in relation to separated asylum-seeking children. It is hoped that this report will encourage consistent treatment of separated asylum-seeking children across Canada, taking the best interests of the children as a primary consideration. Separated children seeking asylum are children first and foremost; their immigration status should therefore not be a barrier to their protection, nor to consideration of their best interests.

This report is the result of limited, qualitative research carried out by one researcher, working for just eight weeks. It makes no claim to be comprehensive, but tries to offer a "snapshot" of the situation of separated asylum-seeking children in Canada, with a focus on British Columbia, Ontario and Québec, where the majority of asylum-seekers are found. Due to limited documentary sources, information was mainly gathered through interviews. Forty-eight interviews were conducted, several involving two or three individuals, with the following key players: UNHCR, Citizenship and Immigration Canada (CIC), both in the regions and headquarters; detention centre managers; Immigration and Refugee Board (IRB) officials; designated representatives; provincial child welfare authorities; social workers; lawyers; and staff of non-governmental organizations engaged in advocacy and providing settlement services.⁵ Because of time limitations, it was not possible to extend the research to foster parents, other care-givers, or to the children themselves. This would be a useful avenue for further research.

⁵ The list of persons interviewed is attached as Annex ii. The author thanks all those who agreed to be interviewed and to share information, despite demanding workloads. UNHCR staff were generous with their time and helped to set up interviews, provided documents and consultation.

2. WHO ARE SEPARATED CHILDREN?

2.1 Definition

UNHCR defines a separated child as:

*"a person who is under the age of eighteen years, unless, under the law applicable to the child, majority is attained earlier and who is separated from both parents and is not being cared for by an adult who by law or custom has the responsibility to do so."*⁶

UNHCR and many NGOs have recently adopted the term "separated" child in preference to "unaccompanied" -- since the designation of a child as "accompanied" can mask the fact of a child's separation from parents or other guardians. This separation is a crucial element of the child's experience of flight and exile.⁷ In addition, children have often been regarded as accompanied, but the adults with whom they arrive or with whom they live after arrival may be unable or unsuitable to care for them. In some cases, there is no assessment by a responsible child welfare authority of the relationship between the child and the "accompanying" adult, and children remain in informal, unassessed care situations. Of course, many children are very well cared for by extended family or members of their ethnic or national community. Others, however, may face neglect and abuse. The term "separated" is used in this paper because it emphasizes the rupture of the relationship between the child and his or her parents or usual caregiver.

In some cases, authorities are concerned that young people claiming to be under 18 years of age are in fact adults. In many countries, x-rays, examinations of physical and developmental maturity and cross-cultural analysis are used to assess age. Such age assessments are not an exact science, and even comprehensive assessments may involve a margin of error of several years.

2.2 Background

Refugee children account for at least 45% of the world's refugees; *separated* children have been estimated to make up 3-5%⁸ of refugee populations. Most are in refugee camps and settlements in the developing world. A relatively small proportion make their way to industrialized countries. Few governments systematically collect and publish data on the numbers and profile of separated asylum-seeking children, and the absence of reliable, comprehensive data has hampered research on this topic. UNHCR statistics for 1999, which covered only 14 industrialized countries and were in part based on estimates, showed that separated children constituted on average 4% of all asylum-seekers in Western European countries.

⁶ UNHCR, "Guidelines on Policies and Procedures in dealing with Unaccompanied Children Seeking Asylum, Geneva, February 1997, para 3.1; UNHCR, "Refugee Children: Guidelines on Protection and Care," op. cit, p.121.

⁷ The "Separated Children in Europe Programme," a joint initiative of UNHCR and European Save the Children organisations, has also adopted this term. See www.sce.gla.ac.uk/ for more information.

⁸ Moser, Audrey and Jan Williamson, *Unaccompanied Children in Emergency Situations*, International Social Service, 1987.

Although relatively few in number, separated refugee and asylum-seeking children are very vulnerable. Separated children lose all that is familiar: home, country, family, school, friends, language and culture. They are separated from parents or other primary caregivers - the very people responsible for their well-being. They face numerous risks and are likely to be disadvantaged in emotional, social, educational and economic terms. The grievous impact on children of separation from parents has been the subject of intensive study across several disciplines.⁹ Separated children may have been exposed to armed conflict, persecution and trafficking - realities from which children are rarely shielded and of which they are often the specific targets.¹⁰

2.3 Why Separated Children are on the Move

The reasons why separated children leave their home countries are complex and numerous. A recent study sponsored by European members of the Save the Children Alliance examined 218 case studies of separated children who had travelled to Western Europe, and cited these reasons:

*".....violent death of parent(s), sometimes in front of child; detention and torture of child; armed conflicts that target child civilians; genocide; forced recruitment of children into armed forces, some under 10 years of age; trafficking of children for the purposes of prostitution under brutal conditions; persecution of child's ethnic group; denial of education due to the child's ethnic identity; political activities of the child or child's family members resulting in persecution; rape and sexual assault; abuse and/or abandonment by parents; poverty and complete lack of opportunity."*¹¹

The Save the Children study found that in many cases the children's parents were dead, missing, imprisoned or ill, or had themselves fled their country, leaving the child in the care of family or friends. In some instances, the children were helped by extended family, friends, religious leaders or NGO workers to leave the country. In other cases it was the child who was particularly at risk, and the parents therefore decided to send the child to safety. Few families in developing countries have the resources to pay for both the child and parents to travel. Some children, left entirely alone, managed to travel to Europe through their own courage and ingenuity. Sadly, many children are also trafficked for sexual or labour exploitation in the destination countries. In such cases, it is usually the traffickers who organise the children's travel.

⁹ For example, the works of John Bowlby (and his followers) in the fields of ethnology and child psychiatry. See: Bowlby, John, *Attachment and Loss*, Hogarth Press, London, UK, 1969-1979.

¹⁰ Article 39 of the CRC requires States to promote the recovery of child victims of armed conflicts, torture and abuse.

¹¹ Ayotte, Wendy, *Separated Children Coming to Western Europe: Why they travel and how they arrive*, Save the Children UK (London, 2000), p.9.

2.4 Canadian Information: Historical and Statistical

The arrival in Canada of separated children has not been well documented. An unpublished article¹² provides some information. Between 1868 and 1925, close to 80,000 British youth were sent to Canada from the poorhouses of Great Britain. While they were not refugees in today's sense of the word, the migration of these children was certainly not voluntary. During World War II, Canada took in around 6,000 "guest children," who were evacuated from Britain to escape the bombardments; 1,500 were separated from family members. Most returned home at the end of the war. In 1956, the Russian invasion of Hungary prompted the flight of many separated adolescents, some of whom came to Canada. Finally, in the late 1970's and 1980's, around 900 separated refugee children from Vietnam, Cambodia and Laos were resettled to Canada from refugee camps in South-East Asia. In the 1990's, separated asylum-seeking children have come from numerous countries,¹³ including many where armed conflict and repressive regimes have displaced large numbers of people.

In Canada, as in other industrialized countries, data on separated asylum-seeking children is not easy to obtain and appears incomplete. While the IRB keeps statistics on claims from separated children which are referred to the Board by the Department of Citizenship and Immigration, the latter does not systematically collect information on separated children. Also, CIC and IRB use different definitions of "unaccompanied" children, which seem to be reflected in their different figures. For CIC, an "unaccompanied" child is one who is not accompanied by a member of the "Family Class" (i.e. parent, spouse or child), or does not arrive in Canada to join such a person.¹⁴ For the IRB, an "unaccompanied" child is one who is alone in Canada without "parents or anyone who purports to be a family member."¹⁵ Separated children who are living with unofficial caregivers may meet this definition, but may not be included in the data. Also, some separated children who inform CIC of their intention to apply for asylum may subsequently not present applications to the IRB. As a result, CIC and IRB data differ. For instance, CIC reported to UNHCR that 871 claims were received from separated children in 1999, and 1,088 in 2000. The number of claims from separated children referred to the IRB in those years was considerably lower.

The table below shows the claims referred to the IRB and recorded as being lodged by separated children, those finalised each year from 1998 to 2000, and the outcomes. Not all claims referred in a given year are finalised within that year, so there is no correspondence between the claims referred and the claims finalized. Claims of

¹² Montgomery, Catherine, Cecile Rousseau and Marian Shermanke, "Alone in a Strange Land, Separated Minors and Issues of Protection." This unpublished article is part of a broader research project on separated children being conducted at the Centre Local de Services Communautaires, Cote des Neiges, Montréal.

¹³ *Report on Unaccompanied Minors: Overview of Policies and Practices in IGC Participating States*; Secretariat of the Intergovernmental Consultations on Asylum, Refugee and Migration Policies in Europe, North America and Australia (Geneva, 1997), p. 128.

¹⁴ See: Immigration Manual, "Port of Entry Processing," Chapter 1, subsection 7.1.2.

¹⁵ See: IRB Children's Guidelines, p.2.

separated children represented from 0.9% to 1.4% of all refugee claims finalized in the three years under consideration.

Year	Claims Referred	Claims Finalized	Positive Decisions (%)	Negative Decisions (%)	Abandoned, Withdrawn, Other ¹⁶ (%)
1998	340	253	186 (74%)	36 (14%)	31 (12%)
1999	404	361	235 (65%)	65 (18%)	61 (17%)
2000	671	417	209 (50%)	147 (35%)	61 (15%)

The percentage of separated children recognised as Convention refugees fell from 74% in 1998 to 50% in 2000, probably due to the numbers of Chinese children whose claims were refused in 2000. Until 2000, the recognition rate for separated children was considerably higher than that of adult claimants. The recognition rates for the total refugee claimant population (adults and children) were as follows: 1998 - 44%; 1999 - 46%; 2000 - 49%. During the three year period, the ratio of separated girls to boys was stable at approximately one-third to two-thirds. The ages of the children and adolescents are set out in the following table as percentages of the finalised claims.

Year (Total)	16-17 years old	11-15 years old	0 - 10 years old
1998 (253)	42%	40%	18%
1999 (361)	46%	38%	16%
2000 (417)	52%	30%	18%

While separated children are frequently portrayed as being mainly 16 and 17 year olds, the statistics do not bear this out. In 1998 and 1999, more than 50% of separated children were under 16 years of age. In 2000, the figure was 46%. A significant number of children were aged 10 years and under.

The top ten countries of origin of separated children (based on claims finalised) showed some variation. In 1998 these countries were: Sri Lanka (100), Somalia (53), China (15), Afghanistan (7), India (7), Rwanda (6), Iran/El Salvador (5 each), and Ethiopia/Honduras (4 each). The two top countries accounted for 60% of the claims finalised. In 1999 the top ten countries were: Sri Lanka (59), Somalia (48), China (44) DR Congo (23), Rwanda (18), Honduras (12), India (10), Mexico (10) and Pakistan/El Salvador/Hungary (7 each).

¹⁶ "Other" refers to the following situations: 1) administrative, e.g. claimant receives permanent residence before refugee claim is finalised; 2) the IRB does not have jurisdiction to determine a claim; 3) claimant is deceased.

The top two formed 30% of the total claims finalised. In the year 2000, the top ten countries were: China (87), Sri Lanka (43), DR Congo (25), India (23), Mexico (17), Somalia (18), Guinea (13), Colombia (11), Pakistan (10) and El Salvador/Iran/Honduras/Hungary/Iran (7 each). The top two countries accounted for 31% of the total claims finalised.

3. INTERNATIONAL AND CANADIAN CONTEXTS

3.1 *International Context*

This report is written at a point in time when mounting international attention has been focused on the human rights of children, as well as on the plight of refugees and displaced persons and on the phenomenon of trafficking in human beings. Numerous international instruments govern the treatment of children, including refugee and asylum-seeking children. The 1989 *Convention on the Rights of the Child* (CRC) is the principal international instrument which establishes states' obligations towards children. It is the most widely ratified international treaty, and it provides a holistic vision of the rights and protection needs of children. Key articles deal with non-discrimination (Article 2), a child's best interests (Article 3), a child's right to be heard (Article 12) and the rights of refugee children (Article 22). Parties must report regularly to the Committee on the Rights of the Child on their implementation of the Convention.

In 1990, the U.N. convened the first World Summit for Children. Soon thereafter, the U.N. Secretary General appointed Graca Machel to investigate the impact of armed conflict on children. Her report, published in 1996, has resulted in a number of initiatives to alleviate the plight of children in conflict zones. In 1997, the Secretary General named a Special Representative on Children in Armed Conflict. In response to widespread use of child soldiers, an Optional Protocol¹⁷ to the CRC was adopted by the U.N. General Assembly in 2000 prohibiting the forced recruitment of children under 18 in state and non-state armed forces. The Statute of the proposed new International Criminal Court makes the use of child soldiers a war crime. In 1999, the International Labor Organization adopted a *Convention on the Worst Forms of Child Labour*¹⁸. In 2000, a new *U.N. Convention against Transnational Organized Crime* was adopted and opened for ratification, together with its *Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children*¹⁹. The U.N. General Assembly will hold a special session on children in September 2001, to review progress toward the goals set by the World Summit for Children in 1990.

The *1951 Convention Relating to the Status of Refugees*²⁰ (Refugee Convention) is the magna carta of refugee law. Its protections extend equally to refugee children and adults. Other relevant instruments include the *Hague Conventions on Private International Law*.

¹⁷ *Optional Protocol to the CRC on the Involvement of Children in Armed Conflict*, May 2000.

¹⁸ *ILO Convention 182 Concerning the prohibition and immediate action for the elimination of the worst forms of child labour*, available on www.globalmarch.org

¹⁹ *United Nations Convention against Transnational Organized Crime* (U.N. Doc. A/55/383); *Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children* (U.N. Doc A/55383, Annex II). The Convention and its four Protocols are available on www.odccp.org/palermo.

²⁰ *1951 Convention Relating to the Status of Refugees*, 189 UNTS 150.

While Canada has yet to ratify the *1996 Hague Convention on the Protection of Children*,²¹ it is potentially of interest in the context of asylum-seeking children. The 1990 United Nations *Rules for the Protection of Juveniles Deprived of their Liberty*²² relate specifically to children in detention.

As of 2000, there were 22.3 million refugees, asylum-seekers and other persons of concern to UNHCR world-wide; nearly half were children. Over the last decade, UNHCR has developed numerous specific policies and programmes to protect and assist refugee children. The UNHCR has also produced recommendations concerning refugee and asylum-seeking children, including most importantly the 1994 *Guidelines on Protection and Care of Refugee Children* (1994 Guidelines) and the 1997 *Guidelines on Policies and Procedures in Dealing with Separated Children Seeking Asylum* (1997 Guidelines). The *UNHCR Handbook on Procedures and Criteria for Determining Refugee Status* (UNHCR Handbook)²³ first published in 1979, also contains guidance for dealing with children's claims.

Numerous Conclusions of UNHCR's Executive Committee make special reference to the needs of refugee children.²⁴ UNHCR and the Save the Children Alliance have jointly developed the Action for the Rights of Children Programme,²⁵ a rights-based capacity and training initiative. In addition, the two organizations have pooled resources to develop the Separated Children in Europe Programme, which reaches out to governmental and nongovernmental agencies working with separated children in 28 countries. On the occasion of the 50th anniversary of the 1951 Refugee Convention, UNHCR is conducting Global Consultations on the international protection of refugees, including with reference to refugee children.

3.2 Canadian Context

Canada ratified *the Convention on the Rights of the Child* in December 1991 and was required to submit its first report on implementation to the Committee on the Rights of the Child in 1994. In response to the report the Committee recognised Canada's efforts in accepting a large number of refugees and immigrants, but also stated:

"... The Committee regrets that the principles of non-discrimination, of the best interests of the child and of the respect for the views of the child have not always been given adequate weight by administrative bodies dealing with the situation of refugee or immigrant children. It is particularly worried by the resort by immigration officials to measures of deprivation of

²¹ The full title of this Convention (#34) is the "Hague Convention of 19 October 1996 on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in Respect of Parental Responsibility and Measures for the Protection of Children", available on www.hcch.net.

²² UN General Assembly Resolution A/RES/45/113, of December 14, 1990.

²³ UNHCR, *Handbook on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol relating to the Status of Refugees*, Geneva, January 1992 (rev.2), paragraphs 213-219.

²⁴ See UNHCR Executive Committee Conclusions Numbers 47 (XXXVIII), 59 (XL), 84 (XLVIII) and 88 (L), available online at www.unhcr.ch.

²⁵ The Action for the Rights of the Child Programme (ARC) has produced resource materials to increase the capacity of UNHCR, governments and NGOs to protect and care for children from emergency through to durable solutions. Further information about ARC is available online at www.unhcr.ch.

*liberty of children for security or other related purposes and by the insufficient measures aimed at family reunification.*²⁶

In 2000, Canada ratified the International Labor Organization's 1999 *Convention on the Worst Forms of Child Labour*. In June 2000 Canada was the first country to sign the Optional Protocol to the CRC on the Involvement of Children in Armed Conflict, and ratified this Protocol in July 2000. Canada has not yet signed the Optional Protocol to the CRC on the Sale of Children, Child Prostitution and Child Pornography because these issues constitute a shared jurisdictional responsibility, and provinces and territories must be consulted. In September 2000, Canada hosted an International Conference on War-Affected Children in Winnipeg, Manitoba.

A proposed new *Immigration and Refugee Protection Act* (Bill C-11) was tabled in Parliament in February 2001 which would require consideration of the best interests of the child in certain immigration procedures.²⁷ This reflects the 1999 decision of Canada's Supreme Court in the *Baker* case.²⁸

Recommendations 1 and 2

1. All aspects of the *Convention on the Rights of the Child* should be incorporated into Canadian law.
2. The proposed new Immigration and Refugee Protection Act (Bill C-11) should stipulate, as per Article 3 of the *Convention on the Rights of the Child*, that "the best interests of the child shall be a primary consideration". This should apply to all measures under Bill C-11.

²⁶ *Concluding Observations of the Committee on the Rights of the Child: Canada*, June 20, 1995, CRC/C/15/Add.37.

²⁷ Bill C-11 requires the best interests of the child to be considered in the context of: applications for permanent residence on humanitarian and compassionate grounds (S.25(1)); obligations of permanent residents (S.28(c)); certain decisions taken by the Immigration Appeal Division (S.67(c), S.68(1) & S.69(2)).

²⁸ *Baker v Canada (Minister of Citizenship and Immigration)* [1999] 2.S.C.R.819.

4. IMMIGRATION PROCEDURES AS THEY RELATE TO SEPARATED CHILDREN

The interviews conducted for this report raised issues relating to procedures at ports of entry, determinations of eligibility to make a refugee claim, detention, humanitarian and compassionate applications, risk of return reviews and removals from Canada. It was pointed out that in some instances there are no clear written guidelines or procedures, thus what is described here may vary to some extent among the regions. In the year 2000, 93% of refugee claimants were found in just three provinces: British Columbia (12%), Ontario (46%) and Québec (35%). Therefore this report concentrates on information available about practices in those provinces.

4.1 Identification at Port of Entry (POE) and Inland

UNHCR's 1997 *Guidelines* state that a separated child seeking asylum should not be refused access to the territory, and specific identification procedures should be in place at the point of entry to determine whether or not a child is accompanied by a parent or other competent caregiver.²⁹ Article 22(1) of the *Convention on the Rights of the Child* requires states to ensure that children seeking refugee status receive "*appropriate protection and humanitarian assistance*". Clear procedures must therefore be established to identify separated asylum-seeking children.

When a child arrives, CIC must determine not only whether the child will be admitted to Canada and to the refugee determination procedure, but whether the child is separated and thus in need of particular attention. The Canada Immigration Port of Entry (POE) Manual defines an unaccompanied minor as "*a child who arrives in Canada or who is already in Canada, who claims or does not claim refugee status, who is alone or if accompanied by another person, it is not a person described in the definition of members of the family class for the purposes of subsection A19(2)(c) or A33, and who does not arrive in Canada to join his/her father, mother or guardian who are already in Canada*".³⁰

The only relevant instructions in the Immigration Manual relating to separated children³¹ appear to be those entitled: "Our Missing Children Programme". The Manual requires that "*young children accompanied or alone, who arouse concern about the purpose of their trip to Canada or their welfare in Canada*" be referred to a Senior Immigration Officer. Some guidelines on interviewing adults and children are provided.

According to many interviewees, most separated children are either met by someone at the POE or have the address and phone number of someone to contact. Some children

²⁹ Paragraph 5.2 of UNHCR's 1997 *Guidelines* states: "Where available, persons specially trained or who have otherwise the necessary experience or skills for dealing with children should assist in the identification".

³⁰ Immigration Manual, "Port of Entry Processing", Chapter 1, subsection 7.1.2.

travel in the company of an adult who may be an "agent", a relative, or a family friend. A few children arrive on their own (sometimes with siblings or other children) and have no contact person in Canada. If a child is met or accompanied by a non-parental adult, CIC officials interviewed indicated that Immigration Officers should try to establish the nature of the relationship and ascertain if it is in the child's best interests. Efforts are made to detect those involved in trafficking of children. Immigration Officers also ask why the child came to Canada, although without directly inquiring whether the child wishes to make a refugee claim. Details of reasons for which a child might fear returning home will also be noted.

Although the researcher was informed that Immigration Officers try to establish the relationship between a child and an accompanying or receiving adult, some interviewees expressed concern that this was not always done, and some children may remain in the care of persons whose relationship to the child or suitability as caregiver is unclear. One Ontario NGO respondent stated that procedures vary from one POE to another, and expressed concern that Immigration Officers do not receive training in interviewing children. A CIC official agreed that this lack of training makes some Immigration Officers reluctant to interview children.

Immigration Officers have a duty to report to child welfare authorities those children who may be in need of protection under child welfare legislation. Where a child is alone or doubts exist about the accompanying adult or the individual who came to meet the child, the Immigration Officer would normally attempt to contact an appropriate child welfare agency. In British Columbia, the Migrant Services Team of Children and Family Development (MCFD) has been mandated to care for separated children. Since the establishment of this Team in 1999, CIC referrals of separated children to the Ministry have been more consistent. In Québec, the officer will normally contact a para-public agency called SARIMM (Service d'Aide aux Réfugiés et Immigrants de Montréal Métropolitain) or the Centre Jeunesse, which provides child care services. In Ontario, the problem is more complex. Children under 16 are referred to a local Children's Aid Society (CAS) or in some cases to another NGO. Young people aged 16-17 cannot be referred to the CAS as there is no statutory duty for the CAS to care for children 16 and older. Concern was expressed by CIC and others that 16 and 17 year olds were thus particularly vulnerable to exploitation.

³¹ Ibid., s. 7.1. "Special Examinations".

Recommendations 3 - 5

3. Written instructions to Immigration Officers should address separated asylum-seeking children as well as abducted/missing children.
4. A new immigration manual should gather all instructions, guidelines and law relating to separated children claiming refugee status.
5. Immigration Officers should receive training on identifying and interviewing separated children, and on basic child protection principles. Whenever a child is accompanied by a non-parental adult, child welfare authorities should assess the relationship.

4.2 Eligibility to Make a Refugee Claim

A claim for refugee status may be made at the port of entry or after entry into Canada. A person under 18 may not be excluded from making a refugee claim or be removed from Canada without representation. Written instructions provide that the CIC must ensure proper representation for a child in this process.³² All children without a parent must appear before an adjudicator of the Immigration and Refugee Board, so that a "designated representative" can be appointed. The representative (a child welfare agency or an individual) is required, among other responsibilities, to sign a Conditional Departure Order on the child's behalf, which stipulates that if refused refugee status, the child will be required to leave the country.

Usually a claimant will be interviewed by an Immigration Officer at the Port of Entry. Sometimes a child will be given a questionnaire to mail in, or (rarely) will be asked to return to the POE for an eligibility interview. The interview notes will be sent to the Senior Immigration Officer (SIO), who decides whether a child is eligible to make a refugee claim. The notes written by the Immigration Officer at the port of entry will also become part of the child's refugee status determination file. There are five grounds on which a person of any age may be found ineligible to make a claim, but the researcher was informed that the children are rarely found to be ineligible.³³ UNHCR's 1997 *Guidelines* (paragraph 4.1) stress that because of their particular vulnerability, separated children should not be refused access to the territory of a country, and their claims "*should always be considered under the normal refugee determination procedure*".

³² Immigration Manual PE10, Section 13.1 "Unaccompanied Minors and Incompetents".

³³ The current grounds for ineligibility are: the claimant is already recognized as a Convention Refugee in another country or in Canada; the claimant has been convicted of a serious crime in Canada and is considered a danger to the public; the claimant is considered to be a member of a terrorist association, or to have committed serious violations of human rights or war crimes; the claimant has come directly or indirectly via a country to which he or she can be returned by agreement (Canada currently has no such agreement with any country); the claimant has already had a claim rejected (and has not been outside Canada for at least 90 days thereafter).

Some children make a refugee claim after they have entered Canada. They may do so in person at a Canada Immigration Centre or in writing, after obtaining a Refugee Claim Kit from CIC. Separated youth may be apprehended by police, identified as undocumented, and made the subject of an investigation. The Immigration Manual states that if the youth wishes to claim refugee status then *"the normal process applies. Depending on the allegations against the minor, a SIO may review the case and issue a departure order or conditional departure order, or the case may proceed to inquiry before an adjudicator"*.³⁴

Recommendations 6 - 8

6. Procedures for determining eligibility to make a refugee claim should not be applied to separated children, whether at ports of entry or inland. All cases of separated children seeking asylum should be referred by CIC to the Immigration and Refugee Board.
7. Canadian government agencies should adopt a uniform definition of a separated child.
8. Canadian government agencies should establish improved data gathering and monitoring mechanisms with respect to separated children, particularly regarding identification at ports of entry and/or inland, referrals to child welfare authorities, detention, and removals.

4.3 Detention

International Standards

UNHCR's 1997 *Guidelines on Asylum-Seeking Children* as well as UNHCR's *Detention Guidelines*³⁵ state that as a rule, children should not be detained. Where detention does occur, states should respect Article 37 of the CRC which requires that deprivation of liberty *"be used only as a measure of last resort and for the shortest period of time"*, that detained children be held separately from adults *"unless it is considered in the child's best interest not to do so"*, and that a child *"shall have the right to prompt access to legal and other appropriate assistance."* Upon ratification, Canada entered a reservation to Article 37 stating: *"Canada reserves the right not to detain children separately from adults where this is not appropriate or feasible."*³⁶ The Committee on the Rights of the Child, commenting on Canada's first report on implementation, was *"particularly worried by the resort of immigration officials to measures of deprivation of liberty of children for security or other related purposes"*.³⁷ Other articles of the CRC, including those which outline a child's

³⁴ Immigration Manual, "Enforcement and Control", Chapter 1, s.10.3: "Special Treatment of Unaccompanied Minors".

³⁵ UNHCR, *Guidelines on the Detention of Asylum-Seekers*, February 26, 1999.

³⁶ On this reservation, see: *Does Ontario and Federal Legislation Comply with the U.N. Convention on the Rights of the Child?* Summary Report, Child Welfare League of Canada., Ottawa, 1999.

³⁷ *Concluding observations of the Committee on the Rights of the Child: Canada*, June 20, 1995. CRC/C/15/Add.37.

right to education (Art. 28), to health care (Art. 24) and to play and recreation (Art. 31), are equally applicable to children in detention.

The *United Nations Rules for the Protection of Juveniles Deprived of Their Liberty* apply to "any form of detention or imprisonment in a public or private custodial setting" (Art. 11(b)) and state that "juveniles deprived of their liberty shall not for any reason related to their status be denied the civil, economic, political, social or cultural rights to which they are entitled under national or international law, and which are compatible with the deprivation of liberty."³⁸ The Rules set out numerous requirements including: segregation from adults unless they are family members; right to legal counsel and legal aid; appropriate physical environment and accommodation; access to education; varied recreational facilities; attendance at faith services and contact with religious representatives; preventative and remedial health care with particular attention to mental health needs; contact with community and family.

General Detention Procedures

CIC interviewees stressed that the detention of children was undesirable, and that the detention of Chinese children in 1999 and 2000 for as long as six months in British Columbia, Ontario and Québec was highly exceptional. However, there is nothing in Canadian law or guidelines which precludes the detention of children.

Nonetheless, compared with some other industrialized countries, Canada detains relatively few asylum-seekers. During 1999-2000, according to CIC, 8,221 people were detained for immigration reasons. Not all were refugee claimants, and many were detained in preparation for removal after rejection of their asylum application or withdrawal of refugee protection as a result of criminality. According to CIC, the average duration was 16 days. Grounds for detention are set out in the

Immigration Act and are identical for children and adults, namely:

- Failure to establish identity,
- Being a danger to the public or posing a security risk,
- Being unlikely to appear for immigration proceedings or removal.

Following arrest in Canada or interview at the POE, Immigration Officers have discretionary power to detain, although they are required to "*consider all reasonable alternatives before ordering the detention.*"³⁹ Within 48 hours of detention, a Senior Immigration Officer must review the case to decide if continued detention is justified and if not, must release the person under suitable terms and conditions.⁴⁰ If not released, the person must be brought before the Adjudication Division of the IRB "*forthwith.*" If detention is maintained, subsequent reviews are held seven days after the first hearing and every 30 days thereafter.⁴¹ IRB adjudicators must explore alternatives to detention and be satisfied

³⁸ Op. cit., note 22.

³⁹ Operations Memorandum EC 98-08, IIS no. 980017, October 27 1998, CIC NHQ.

⁴⁰ *Immigration Act*, subsection 103(5)(6). *Immigration Regulations*, 1978, sections 23-23.1. See also, Immigration Manual, EC1, Appendix L.

⁴¹ *Immigration Act*, subsection 103(6).

of the validity of reasons for continuing detention. Alternatives to detention may be considered.⁴²

Statistics

There are no comprehensive statistics on detention of children, whether accompanied or not. CIC estimates⁴³ show that during 1999-2000, 338 children were detained: 252 were held with a parent (usually the mother), 86 were separated children. Detention times varied: 252 were detained for one day or less; 24 were detained for less than 15 days; 42 were detained for over 30 days. CIC could not provide the age, nationality, sex, reason for the detention, or whether the children were refugee claimants. Approximately 50% were Chinese and Pakistani children. CIC suggested that most had been detained pending removal.

Detention Conditions

Separated children may be held in a variety of settings, including immigration detention centres, adult correctional institutions and young-offender facilities. In Ontario, CIC has a contract with the Ontario Ministry of Correctional Services to accept immigration warrants. In British Columbia, immigration detainees are also held in provincial correctional facilities. Children under 18 years of age who are detained are housed in a youth offender facility operated by a youth custody branch of the Ministry of Children and Family Development. The researcher visited two CIC detention centres in Mississauga, Ontario and Laval, Québec. Both facilities can house 100 persons and have separate wings for male and female detainees. They are located a considerable distance outside the metropolitan centres of Toronto and Montréal and access by public transport is difficult. While children are housed in separate rooms with supervision, they nonetheless mingle with adults in the common spaces. Security guards are hired from private security firms and are not necessarily experienced in working with children.

The Ontario facility, called "Celebrity Inn", is one part of a functioning hotel, converted into a detention facility. In the opinion of the researcher, the centre is a bleak environment, run-down in appearance. Its limited common spaces also serve as cafeterias. Detainees must remain in their rooms except during specified meal and activity periods. They may only talk to visitors via a windowed booth; no direct contact is allowed. A NGO staff member⁴⁴ is on site one and a half days per week to provide advice to detainees. A nurse is on site every morning but a doctor is only available on a part-time basis. There are no play facilities for young children although a computer room is available on the women's side; this was set up for the Chinese children detained in 2000, at a late stage in their detention.

⁴² 1. Cash bonds provided by another person; 2. Performance or conditional bonds provided by another person who promises to pay a specific amount in future if the detainee does not comply with conditions of release; 3. A promise to appear - release on the detained person's own recognisance. This can be applied where the risk is considered low; 4. Imposing strict terms and conditions of release; 5. Third party risk management programs e.g. with the Toronto Bail Program who supervise the released person.

⁴³ These are manually collected from the regions and collated by CIC NHQ.

⁴⁴ Toronto Refugee Affairs Council

The "Laval Centre for the Prevention of Immigration" is a former penitentiary. It is in good condition, well lit and maintained. The men's side has considerable common space; the women's side is quite small. There is a room where detained persons can meet face to face with visitors. Detainees have greater freedom of movement than at Celebrity Inn and are not confined to their rooms, except after 11:30 p.m. Three nurses and two doctors are available on a daily basis and there are two psychiatrists on call. The women's wing will be enlarged in the near future and will include classroom space for children. Efforts have been made by staff to provide some toys for younger children and guards purchased a videotape player to enable the Chinese children who were detained there in 1999/2000 to watch films. An adviser and volunteers from the NGO "Action Réfugiés Montréal" visit detained persons. Two teachers (English and French languages) are on contract to provide education on an "as-needed" basis for separated children, and the director intends to involve social workers from the local Community Health Centre (CLSC) to carry out assessments of any separated children who are detained in future. At Laval, security staff receive information on the cultural norms of detainees; a course on cultural differences is being planned by CIC Québec. Interpretation is provided only via a telephone service.

Guidelines and Proposed Legislation on Detention of Separated Children

The Immigration Manual contains guidance on procedures to consider when enforcement action (including detention) may be taken against a separated child. The case should be referred to the Regional Director General or Director of Immigration for review.⁴⁵ Concern for the child's welfare is not sufficient reason for arrest, but *"the indigence of a minor, however, may be a strong indicator that the minor is unlikely to appear for inquiry or removal."*⁴⁶

Before deciding to detain, Immigration Officers should ascertain *"how self-sufficient a child is or whether someone is willing to look after the child... (and) make the necessary arrangements with local child welfare agencies or social or child protection services to determine whether they can take charge of the minor, if necessary, until immigration procedures have been completed."*⁴⁷ *The IRB Guidelines on Detention*⁴⁸ state that the detention or release of a child should be guided by the CRC, *the Canadian Charter of Rights and Freedoms*, and in reference to the UNHCR *Handbook on Procedures and Criteria for Determining Refugee Status*. Detention should be a last resort.

The proposed Bill C-11 (s.60) affirms as a principle that a minor child shall be detained only as a measure of last resort, *"taking into account the other applicable grounds and criteria,"* and that regulations *"may include provisions respecting special considerations that may apply in relation to the detention of minor children"* (s.61(c)). The CIC Briefing for Bill C-11 indicated that the regulations would:

- ensure that special considerations for the detention of children are clearly prescribed and consistent with Canada's commitments under the CRC;

⁴⁵ Immigration Manual, EC1, subsection 10.1: The referral should include a range of information including the child's family in Canada and abroad, reasons for coming to Canada, living circumstances and support, contact with child welfare authorities and humanitarian and compassionate considerations.

⁴⁶ Immigration Manual, EC1, subsection 10.2

⁴⁷ Immigration Manual, "Port of Entry Processing", Chapter 1, subsection 7.1.2.

⁴⁸ Immigration and Refugee Board, *Guidelines on Detention*, Ottawa, March 12, 1998.

- adopt the UNHCR definition of a separated child;
- require decision makers to consider the following factors:
 - (a) failure to co-operate will not be a factor in the detention of minors
 - (b) availability of alternative arrangements with local child welfare agencies
 - (c) anticipated length of detention
 - (d) possibility of continuing control of minors by smugglers or traffickers
 - (e) nature of the detention facility
 - (f) availability of services, notably education, counselling and recreation.

British Columbia:

In the summer of 1999, 134 separated Chinese children arrived off the B.C. coast along with 465 adults. After initial processing at the Canadian military base in Esquimalt, the majority of the children were released into the care of the Ministry of Children and Family Development (MCFD), which housed them in facilities in Victoria and Burnaby. However, 18 boys remained in youth detention for approximately seven months. Eventually the MCFD sought their release, but CIC argued for continuing detention because it suspected the boys might be involved with the organizers of the smuggling operation. Eventually all were released into the care of MCFD. Only five children were recognised as Convention refugees. The majority received negative determinations and left B.C. (and probably Canada) illegally. Some former caregivers remained in touch with some of the young people and report that about 40 of them are in New York City while others are known to be in Chicago, Baltimore and Philadelphia, all working illegally. Some joined family members in the USA.

Ontario:

In early 2000, two groups of Chinese children were apprehended as they were being smuggled across the Ontario/U.S. border. There were 17 children in all, mostly girls. Initially, the children were detained in three separate facilities: Renaissance House, a facility for youth up to age 16, under the jurisdiction of the Ministry of Community and Social Services, Vanier Youth Detention Centre for Women in Brampton and Bluewater Youth Centre in Goderich. The latter two facilities are managed by the Ministry of Correctional Services. For several reasons, including pressure for beds at Renaissance House, unsuitability of placing minors detained for immigration reasons with persons with criminal convictions, change of counsel and CIC's desire to put all minors in a separate location, the minors were moved to the Celebrity Inn detention facility in Toronto. Several agencies, including UNHCR, the South East Asian Legal Clinic and the Office of Child and Family Service Advocacy argued for their release and suggested alternatives to detention.

A petition to the Ontario Superior Court⁴⁹ to release the children was rejected, but the judge expressed serious concern about the length and conditions of detention of the children and called on immigration officials to move the children and expedite their refugee process. Eventually the IRB released all of the children. In the majority of cases, bondspeople presented themselves and posted bonds ranging from \$5,000- \$20,000. Some young people disappeared after their release and are thought to have gone to New York.

Québec:

Twelve Chinese and three Pakistani children were apprehended along with (unrelated) adults as they were being smuggled across the U.S. border in the autumn of 1999. The children were detained in the Laval Centre. Two younger Chinese children (6 and 10 years old) were quickly released and placed in foster care. The three Pakistani children, including an eight-year old girl, remained in detention for three months and were released after one of them was recognized as a refugee. The remainder, aged 15-17, stayed in detention. The children were visited by UNHCR, by SARIMM social workers and a legal adviser from Action Réfugiés Montréal, who also argued for their release at detention hearings. For the first three and a half months, CIC maintained that detention was necessary to prevent flight. Later CIC took the position that the children could be released into foster care under certain conditions. The IRB Adjudication Division however did not release the children into foster care until a few months later, by which time they had been detained for six months. All were refused refugee status and are awaiting a judicial review decision.

⁴⁹ Ontario Superior Court of Justice, File No: 00-CV-192960, July 27, 2000. The judge declined to take jurisdiction .

Concerns of Interviewees Regarding Detention

The following points reflect the concerns of a range of interviewees representing child welfare agencies, social workers, lawyers, CIC, NGOs, corrections agencies and child advocates. They are not presented in any priority order and do not necessarily reflect the views of the UNHCR:

- The immigration detention centres are not appropriate places to detain children, let alone separated asylum-seeking children. They have none of the facilities required for children, and CIC has no particular child-care expertise. Young offender correctional institutions are not appropriate either, as their services are not geared to the particular needs of separated asylum-seeking children.
- CIC, lacking experience with separated children, was in a learning process when the Chinese minors arrived in 1999. In Ontario and Québec, CIC felt there was no alternative to detention, in order to address the risk of flight and risk to the children posed by traffickers, yet CIC did not attempt to dialogue with the children in order to assess risk of flight. At detention hearings, CIC did not provide specific evidence to substantiate the need for continued detention. Several CIC interviewees in these provinces were unhappy at detaining children and felt that child welfare authorities in some provinces were not sufficiently concerned with the children's welfare.
- Immigration detention is designed for short stays only, and yet some children were detained for as long as six months.
- Children were on occasion detained with unrelated adults, and with persons with criminal charges or convictions.
- The Chinese were treated differently from other groups of refugee claimants. It has been suggested that their detention was mainly intended as a deterrent against future arrivals.
- The children were the victims of trafficking and yet, unlike other victims of crime, they were detained.
- In detention centres, the children felt isolated and interpretation facilities were inadequate. The centres are far from lawyers, support groups and cultural communities and difficult to access. Legal aid payments for detention hearings do not take account of the time required for counsel to travel to detention centres.
- The children suffered emotionally and psychologically from detention. Depression, crying spells, insomnia, dizziness and fainting were reported. The Chinese youngsters did not have access to Mandarin speaking doctors. They had broken no laws but felt treated like criminals.
- In Ontario and B.C., children were exposed to the media while being transported to detention hearings and photographed in handcuffs. In Québec, the children were also filmed during a detention hearing and the images were broadcast on television.
- No education was provided to the children in Ontario and Québec until very near the end of their detention period. In Ontario, ESL was provided by NGO volunteers. Books and other materials were provided by visitors.
- Recreational and exercise facilities are non-existent or minimal in immigration detention centres and access to chaplains and faith services was limited. Visitors had to supply basic hygiene products as well as articles of clothing.

Comment

There is broad consensus that the detention of children, including separated children, is inherently undesirable and should be avoided. The government has made a positive commitment to this by stating in proposed primary legislation that it will be a measure of last resort. In relation to Bill C-11, CIC has affirmed that :

*"security and safety of unprotected minors arriving as part of criminally organised smuggling or trafficking operations is a major concern. These children are vulnerable to exploitation and coercion by the traffickers; in these cases, detention is truly a last resort... the Government will make every effort to make arrangements with provincial social services to protect these children effectively, while seeking to ensure they are not deprived of education and other basic needs."*⁵⁰

Despite the efforts to improve conditions at Laval, the two immigration detention facilities visited by the researcher remain inappropriate places to hold children. The Ontario Ministry of Correctional Services, CIC and other interviewees were unanimous that it is not appropriate to detain separated asylum-seeking children who have not committed any crimes, in youth custody facilities.

It remains unclear how future arrivals of separated asylum-seeking children will be handled. The British Columbia Ministry of Children and Family Development stated that CIC sought assurances that future groups of children in Ministry care would be held in secure accommodation to prevent absconding. The Ministry has taken the position that it is unable and unwilling to establish a closed detention facility for these children, and is not able to assume responsibility to confine those in its care. In Québec, there has been little progress on the issue, although the Director of the Laval Centre is attempting to improve services for children. In Ontario, draft protocols have been discussed by concerned agencies, but are not finalised and would require financial commitments from CIC. While recognizing the concern about trafficking of children, many interviewees cautioned that government policy may be overly influenced by the recent experience with the Chinese arrivals.

⁵⁰ CIC News Release, "Backgrounder #4: Detention Provisions Clarified", March 2001.

Recommendations 9 and 10

9. Every effort should be made to ensure that separated children are not detained. Protocols should be developed involving CIC, provincial child welfare and other agencies, to identify alternatives to detention.
10. Special consideration should be given to the types of accommodation and care provided to trafficked children and others at risk of exploitation. Dialogue among provinces in Canada and at an international level could enhance learning in this respect.⁵¹

4.4 Initiating the Refugee Process, Social Benefits and Legal Aid

When CIC determines that a child is eligible to make a refugee claim, the child will receive a package containing: the Certificate of Determination of Eligibility and Referral to the Convention Refugee Determination Division ("certificate of eligibility"), the Conditional Departure Order, the Personal Information Form (PIF), a form for the obligatory medical examination, information on services provided under the Interim Federal Health Program (medical and dental), a Notice to Appear at the IRB and a claimant's guide.

Under the CRC, children have the right to health care and education. Article 24(1) ensures children... *"the enjoyment of the highest attainable standard of health and [access] to facilities for the treatment of illness and rehabilitation of health"*. It provides that *"States parties shall strive to ensure that no child is deprived of his or her right of access to such health care services."* Article 39 requires States Parties *"to promote the physical and psychological recovery and social reintegration of a child victim of any form of neglect, exploitation, or abuse; torture or any other form of cruel, inhuman or degrading treatment or punishment; or armed conflicts"*. Similarly, the CRC (Art. 28(1)) provides that children have the right to education *"on the basis of equal opportunity."* These entitlements apply equally to children regardless of their status.

In Canada, a child who has been found eligible to make a claim may apply for a student authorisation in order to attend school; it takes from a few days to several months to process the application, depending on the province. Interviewees raised concerns that some children could not attend schools because they did not have the authorisation or because school boards excluded them. Bill C-11 provides that a minor child in Canada, other than a child of a temporary resident not authorized to work or study, may study at

⁵¹ The U.K. Social Services Department has established a safe house in South-Eastern England for children who have been trafficked, mainly from West Africa, apparently for prostitution. Adults are present 24 hours a day and children are chaperoned when they go out. Education is provided in-house and video cameras are located outside the premises. Social Services explains the reasons for the protective measures to the children and involves them in the child protection plan. They meet with other children who have been trafficked at an earlier date and who can reassure them as to the intentions of social services. The children are not held in correctional facilities, yet are kept secure and have access to all the entitlements of children in care. This sort of facility requires intensive investment, however.

pre-school, primary or secondary levels.⁵² Thus, asylum-seeking children should no longer require a student authorisation to attend school, although as education is under provincial jurisdiction, it is unclear if school boards will recognise this entitlement. Separated asylum-seeking children are likely to need the help of an experienced adult to enrol in school.

Like all refugee claimants, a separated child must undergo a medical examination. The Interim Federal Health (IFH) program covers "essential services for the prevention or treatment of serious medical and dental conditions, as well as contraception, prenatal, and obstetrical care. It does not cover all routine medical or dental services".⁵³ Mental health services are not covered under the IFH, which only pays for one visit to a psychiatrist or psychologist. Although some children do receive free treatment from voluntary counselling services, the IFH provisions do not allow separated asylum-seeking children to seek the sort of mental health treatment they might urgently require.

Recommendations 11 and 12

11. Provincial authorities should ensure prompt access to education for separated asylum-seeking children.
12. Separated asylum-seeking children should have access to needed mental health services, while their refugee claims are being processed.

Legal Aid

In the three provinces studied, separated asylum-seeking children are entitled to legal aid to pay for counsel to represent them in the refugee determination process. In Ontario, 16 hours are payable for preparation of the claim leading up to the hearing. Attendance at the hearing is payable as required. In British Columbia, the Attorney General pays the legal fees of children under the guardianship of the Ministry of Children and Family Development, while other separated children have recourse to legal aid. In Québec, announced legal aid tariff adjustments will comprise lump sum payments of \$170 for preparation of the Personal Information Form (PIF) of the principal applicant and \$50 for preparation for each dependant co-claimant. For attendance at the CRDD hearing there will be a lump sum payment of \$285. On March 29, 2001, the federal government announced that it had committed additional funding to the provinces for legal aid for 2001-2002.

⁵² The *Immigration and Refugee Protection Act* (Bill C-11), Section 30(2).

⁵³ Fact Sheet, Community Legal Education, Ontario. February 2000.

It is crucial that children's access to legal aid be maintained, to ensure that their refugee claims are properly presented. Children's special needs and vulnerability are evident and indeed are the reason why the IRB adopted procedural and evidentiary guidelines pertaining to them.⁵⁴ Article 12 of the CRC requires that children be "*provided the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly, or through a representative*". UNHCR's *1997 Guidelines* recommend that a child be given access to a qualified legal representative.

Recommendation 13

13. Federal and provincial authorities should work together to ensure that all separated asylum-seeking children have access to qualified legal counsel.

4.5 **Removal of Separated Children**

UNHCR's 1997 Guidelines outline procedures to follow if a separated child who is found not to be in need of protection is to be returned to the country of origin. The *Guidelines* state that the "*best interests of a separated child require that the child not be returned unless, prior to return, a suitable care-taker such as a parent, other relative, other adult care-taker, a government agency, or a child-care agency in the country of origin has agreed, and is able to take responsibility for the child and provide him/her with appropriate protection and care.*"⁵⁵

To assess the suitability of care arrangements in the home country, local agencies in that country or international NGOs (such as International Social Service) may be consulted. Families may need assistance to care for the returning child. Counselling prior to return is particularly important where a child is reluctant or fearful. The child should also be encouraged and assisted to contact his or her family prior to returning.

If separated asylum-seeking children have exhausted all possibilities to remain in Canada, they will be returned to their country of origin or to a third country. However, CIC was not able to provide precise data on removals of separated children. According to CIC figures, in 1998-1999, 1,147 children were removed from Canada. 874 children were under 14 years of age and 273 were aged 15-18. It is not known how many separated children were removed. It is presumed that the overwhelming majority of those removed were accompanied by family members.

⁵⁴ Op. cit., note 4.

⁵⁵ UNHCR *1997 Guidelines*, para. 9.4.

CIC enforcement officers stated that in the case of a separated child, they contact the child's parent(s), family members or a government agency before return. As far as could be ascertained, no written instructions exist for CIC officials detailing the inquiries to be made in the child's home country. However, according to an unpublished CIC draft discussion document *'work is currently underway to formalize current arrangements whereby the risk assessment and removal are completed only after acceptable reception arrangements in the country of origin have been made'*.⁵⁶

CIC Québec stated that if they doubt a family's ability to care for the child, a visa officer may contact the family or a local authority for more information. Visa officers do not conduct home assessments, although International Social Service may be asked to do so. If no one is available to care for the child, removal will be delayed until a suitable caregiver is found. CIC Ontario stated if a Children's Aid Society had concerns about the return of a child in their care, the CIC would be guided by those concerns.

When a decision to return a separated child has been taken, CIC will advise the Canadian Embassy or Consulate in the destination country of the child's planned arrival. CIC has national guidelines on the use of escorts for the removal of separated children, which state: *"All separated minors ages 12 and under should be removed with an escort. Children between the ages of 13-18 can be returned on direct flights to their country of origin, without escort, where the airlines will accept responsibility for the child during the trip and where no other safety or security risk exists. Children between the ages of 13-18 should be accompanied by an escort on non-direct flights or on direct flights where the airline cannot accept responsibility for the child's care en route or where other safety or security risks exist. In all cases of removals of minors, reception with family members or representatives of government departments or agencies responsible for child welfare should be arranged prior to departure"*.⁵⁷ In most developing countries to which children may be removed, state-run social services, where they exist, have limited ability to provide a separated child with adequate care. Therefore the return of children under such circumstances is unlikely to be desirable and should be carefully considered.

⁵⁶ "Unaccompanied Minor Refugee Claimants", Unpublished Draft Discussion Document, Strategic Planning, Policy and Research, CIC, August 2000.

⁵⁷ "National Guidelines on the Use of Escorts for Removals and the Reporting Requirements of Escorting Officers," Operations Memorandum EC-00-02., January 12, 2000. Policy file no. 8554-4310-15.7.

Home Country Links and Return

Save the Children organizations and municipal authorities in some Nordic countries are developing -- where it is safe to do so -- programmes to help separated youth to develop home country links. For example, Swedish Save the Children (with government assistance) has organized two home country journeys for young Somalis to enable them to visit family members and see for themselves what life in Somalia (Somaliland) is like. A programme aimed at providing young Somalis with skills they can use at home is also being developed.

International Social Service (ISS) in Italy runs an assisted return programme (with government funding) for separated Albanian boys and girls who were trafficked to Italy or who went in search of work. In Albania, the young people are reunited with their families through ISS Tirana, and provided with training and assistance to establish themselves. Not all of these returns are voluntary, however.

Recommendations 14 - 16

14. CIC should review its policies and procedures regarding removal of separated children to ensure, consistent with Article 3(1) of the CRC, that the child's best interests are a primary consideration.
15. Children should be provided with counselling prior to return. If no family members or suitable caregiver in the home country can be found, Article 22(2) of the CRC requires that "*the child shall be accorded the same protection as any other child permanently or temporarily deprived of his or her family environment, for any reason, as set forth in the present Convention*". A decision to return a child to institutional care requires particular scrutiny.
16. A child under 18 who is being removed should be escorted to the final destination to ensure that the child is met by the designated person.

5. SEPARATED CHILD CLAIMANTS - REFUGEE DETERMINATION PROCESS AND POST DETERMINATION PROCEDURES

This section deals with the refugee status determination process as well as with judicial review, post-determination risk of return reviews and humanitarian and compassionate procedures.

5.1 *Immigration and Refugee Board - The Refugee Hearing*

Canada's Immigration and Refugee Board (IRB) is an independent, quasi-judicial administrative tribunal created in 1989 by an Act of Parliament; the Chairperson reports to Parliament through the Minister of Citizenship and Immigration. The IRB has three divisions: The Adjudication Division conducts detention hearings and inquiries for people considered inadmissible or removable under The Immigration Act. The Immigration Appeal Division hears a variety of immigration appeals. The Convention Refugee Determination Division (CRDD) is responsible for making decisions on refugee claims. Decisions on applications for refugee status are taken by Members of the CRDD, who are appointed by the Government after a competitive procedure, but who do not necessarily have previous experience of refugees or refugee law. CRDD Members develop expertise on certain countries/regions and normally deal with refugee claims from individuals from those areas.

A refugee in Canada is defined according to Article 1(A)(2) of the *1951 Refugee Convention*. Adult and child refugee claimants must demonstrate a well-founded fear of persecution for reasons of race, religion, nationality, membership of a particular social group or political opinion. The *Refugee Convention* makes no distinction according to age, and children must meet the same standards as adults. The IRB has published a commentary on the definition of a Convention refugee, but no specific mention is made of child refugee claimants.⁵⁸

Refugee claimants, including separated children, must complete and submit a Personal Information Form (PIF) to the IRB within 28 days of receipt of the form, failing which their claim may be declared abandoned. The PIF is the most important document for the determination process, as it sets out the reasons for seeking refugee protection.

If the IRB receives an application from an "unaccompanied child," the case is flagged as a priority and a pre-hearing conference should commence within 30 days. At this conference the child's Designated Representative (DR) should be appointed as required under section 69(4) of the *Immigration Act*. Also at the pre-hearing conference the nature of the evidence will be discussed along with the child's ability to give testimony. A date for refugee hearing will be set and an interpreter should be appointed.

A claim which appears to be manifestly well-founded may enter the "expedited process." In this event, the child's counsel will meet with a Refugee Claim Officer (RCO) of the IRB, whose role is to assist the CRDD in the preparation and conduct of the hearing.⁵⁹ The RCO may make a recommendation to the CRDD Member to accept the claim without a hearing. If this recommendation is accepted, a single Member will then issue the final positive decision. If not, the case enters the regular determination procedure.

In 1996, after extensive consultation, the IRB adopted its *Children's Guidelines*. They were drafted in response to an increase in the number of child claimants and concerns about how CRDD Members were dealing with these claims. The *Guidelines* set out procedural and evidentiary issues that Members should take into account, and state that: "*In determining the procedure to be followed when considering the refugee claim of a child, the CRDD should give primary consideration to the 'best interests' of the child*".

The *Children's Guidelines*, with the exception of provisions on the appointment of a DR, are not compulsory or required by law. To date, they have not been tested before the Federal Court, although the *Guidelines on Gender Persecution* have been the subject of a court decision which found that Members are expected to follow them.⁶⁰

The *Children's Guidelines* define an "unaccompanied child" as one under 18 who is "*alone in Canada without their parents or anyone who purports to be a family member. For example, an older (unaccompanied) child may be living on his or her own or a child may be living in the care of a friend of the child's family.*" This is slightly different from UNHCR's definition where a separated child is one who is "*not being cared for by an adult who by law or custom has responsibility to do so,*" and distinctly different from the CIC definition which refers to a child not accompanied by a member of the Family Class. Under both definitions, a child accompanied by a sibling barely into adulthood would not be considered unaccompanied.

The refugee status determination hearing is conducted in camera and the proceedings are tape-recorded. Following introductions, the claimant's counsel normally has an opportunity to question the claimant and allow him or her to describe his/her experience and fear of persecution. The claimant is then questioned by the RCO. Members may ask questions at any point. Both counsel and RCO may present written materials relevant to the claimant's situation and general country conditions. Testimony may also be heard from family and community members, medical experts, mental health specialists, teachers, social workers and others. An oral decision may be rendered at the end of the hearing, but all decisions must be confirmed in writing. In the case of negative decisions, written reasons will accompany the decision.

⁵⁸ Immigration and Refugee Board, Legal Services, *Interpretation of the Convention Refugee Definition in the Case Law*, Ottawa, December 1999.

⁵⁹ Immigration Act, Section 68.1.

⁶⁰ Case of *Narvaez v. Canada (Minister of Citizenship and Immigration)*, (1995), 89 F.T.R.94 (F.C.T.D.). the court found "... the Board did not follow its own guidelines. While the guidelines are not law, they are authorized by subsection 65(3) [as am. by s.c.1992, c.49, s.55] of the Act and intended to be followed unless circumstances are such that a different analysis is appropriate."

The claimant's credibility is a crucial issue, and claimants may be refused on the basis that their testimony was not credible. The IRB has produced an extensive commentary on credibility⁶¹ but it makes no reference to child claimants, other than to refer to the *Children's Guidelines*.

5.2 The appointment and role of the Designated Representative

Many interviewees expressed concerns about the appointment and role of the DR for a separated child. For IRB Members, the difficulty lies in ascertaining the nature of the relationship between the child and the designated representative (excluding cases where a professional person is engaged), and consequently the person's interest in carrying out the role. Concern was also expressed about the possibility that individuals who offer to undertake this role may be involved in trafficking or exploiting a separated child. In cases where the IRB has doubts as to the person's suitability, IRB Members indicated that they would prefer that child welfare authorities conduct an assessment to clarify the matter.

It should be noted that the DR is not necessarily the child's legal counsel. The CRDD Handbook speaks of the appointment of the DR, noting that: "*where the claimant has a parent, other relative, legal guardian or trusted friend who appears to be capable and can meet the above criteria, then that person will usually be designated as representative. In other cases, the Refugee Division member may select a representative from a list of professional persons in their region, generally lawyers or social workers..... potential representatives should be screened to ensure they have satisfactory knowledge and experience for the task at hand and that their actions will be governed by a code of professional conduct. Another factor which may often be important in selecting a suitable representative is the representative's familiarity with the language and culture of the claimant*".⁶² When a child turns 18 during the proceedings, the DR "*is no longer required under the Act and should be relieved of authority*".

The *CRDD Handbook* states that the role of the DR will vary according to the age and maturity of the individual child. According to that *Handbook*, the role of the designated representative "*should not be confused with the role of counsel. The two roles are not identical, although in some areas there may be some overlapping responsibility. One person may fulfil the roles of designated representative and counsel at the same time*". The role of the Designated Representative is to "*try to ensure that the wishes of the minor ... are carried out with respect to the proceedings...*" Where these wishes cannot be ascertained, the DR may act in what seems to the representative to be the "best interests" of the child.⁶³

⁶¹ See *Assessment of Credibility in the Context of CRDD Hearings*, Legal Services, IRB, Ottawa, October 1999, p.67.

⁶² Convention Refugee Determination Division Handbook (*CRDD Handbook*), Chapter 10, "Representatives for Minors and Incompetent Persons", IRB, March 31, 1999, section 10.4.

⁶³ *Ibid*, section 10.5.

Under s.69(5) of *the Immigration Act*, the DR receives an honorarium for carrying out the role (currently \$400 for a normal procedure and \$200 for an expedited procedure). Some interviewees felt that the honorarium is too low to attract qualified individuals.

In Québec, the IRB has a contract with the Service d'Aide aux Réfugiés et Immigrants de Montréal Métropolitain (SARIMM), whose social workers act as the DR for separated children and many who would be considered "accompanied" under the IRB's *Children's Guidelines*. In British Columbia, the Migrant Services Team of the Ministry of Children and Family Development acts as the DR for separated children. In Ontario, the IRB has a list of about eight professionals (mainly lawyers) who are available to act as the DR. In all three provinces, relatives are frequently appointed as the DR for child claimants who are not accompanied in Canada by their parents. Some Members have on occasion disqualified a relative where doubt existed about his or her suitability. The Deputy Chair of the IRB stated that the IRB would prefer that one agency assumed the role of DR in each province.

The CRDD Members are expected to ascertain a prospective DR's aptitude and understanding of the role. One IRB Member stated that in her experience it was "hit and miss" as to the person's ability to carry out the role. Non-IRB interviewees expressed concern that Members were not adequately vetting the DR's ability. A "professional" DR stated that too often IRB Members do not assess the DR, but rather accept counsel's recommendation. Relatives and others who are caring for a child may be well-intentioned, but lack the knowledge and confidence to carry out the role. In some cases, family dynamics may impede their ability to carry out the role in the child's best interests. For instance, in one situation, it was revealed that an older sister was in fact pressuring a child not to reveal information she considered shameful to the family, but which was key to the child's claim. One lawyer thought that lawyers were not necessarily the most appropriate persons to be the DR since, in her view, the DR should have a different perspective from that of the child's counsel, and should have an overall view of the child's best interests, should ensure that the child's views are reflected, and should check on counsel's performance.

Non-IRB interviewees were concerned about inconsistency among IRB Members in understanding the role of the DR. Some felt that Members accorded little importance to the DR once the designation was made, and treated the DR as an observer, discouraging interventions. SARIMM social workers considered intervention on their part necessary to ensure proper conduct in hearings, although this was not always welcomed by IRB Members. One former IRB Member stated: "*The DR is a grey zone. Technically the DR can participate, but not all IRB Members understand this*". A DR, who is also a social worker, commented that the role is not clearly defined.

Recommendations 17 - 21

17. The role of the Designated Representative (DR) should be clarified. The DR should be considered a participant in the proceedings, and should assist in communication of the child's views (as per Article 12 of the CRC).
18. Clear procedures for the appointment of the DR should be developed, emphasising means by which aptitude for this function is to be assessed. Child welfare agencies should consider their role in this process.
19. Provinces which have not already done so should consider establishing a contractual arrangement with an appropriate agency to act as the DR for separated children, and for those whose family members are unsuitable or unable to fulfil this role.
20. Consideration should be given in all provinces to the recruitment and training of DRs from the cultural communities of asylum-seeking children.
21. A separated child who turns 18 during the refugee determination procedure should continue to have the assistance of a DR. Despite reaching the age of majority, such young people without family support remain vulnerable.

5.3 Procedural and Evidentiary Matters

Appointment of Panel: The *Children's Guidelines* state that consideration should be given to appointing Members with particular expertise in dealing with children's claims. Similar consideration should be given to RCOs and interpreters, but whether this is done is not clear. A social worker suggested that decisions on which IRB Member or Members should hear a separated child's claim should be case-specific, and take account of the child's sex and cultural background. IRB Headquarters confirmed that in their view, all Members are trained in respect of the *Children's Guidelines*, and it would not be desirable to create specialist teams to hear children's cases.

Prioritising Children's Cases: The *Children's Guidelines* require children's claims to be prioritised. According to IRB statistics, in the year 1999-2000 it took an average of 7.3 months to process a child's claim, as opposed to an average of 9.6 months for all claims. Some interviewees knew of cases where children waited in excess of a year for their hearing. In Toronto, children's claims were delayed due to a 25% overall increase in refugee claims.

Hearing Room Environment: The *Children's Guidelines* require that children's hearings be conducted in an informal atmosphere. A Montréal IRB Member stated that in 1996, a special hearing room had been decorated and set aside for children's cases, but it was

little utilised. A Vancouver IRB Member stated that a small hearing room was normally used for children's cases. Interviewees felt the physical atmosphere was nonetheless too formal and intimidating, with poor acoustics, fixed microphones and Members sitting on a dais cited as problems, depending on the room used. The researcher observed the hearing of a 13 year old boy and found the atmosphere very similar to a court proceeding. An experienced DR said that children often were fearful of attending the hearings, and this underscored the importance of creating an atmosphere which would allow children to feel comfortable telling their stories.

Communicating with Children: Interviewees cited considerable variations in how IRB Members relate to children. Some Members were empathetic and communicated well with children. Two DRs stated they had never seen a Member behave in an arbitrary manner with a young child. One Member stressed the importance of giving simple, clear explanations to children at the outset and of having a "nurturing" approach, without raising false expectations as to outcomes. For example, in one case a Member went to sit beside a girl who was having difficulty speaking in order to encourage her. Another Member explained how she had encouraged a child, who was having difficulty answering questions, to draw a picture of her home and family. It greatly facilitated the child's testimony. This contrasts with others who appear less at ease communicating with children, and who treat children as if they were miniature adults. Examples were cited of inappropriate questioning of children as young as six and seven. Some interviewees were of the opinion that the personality of the IRB Member was key, and that training was not sufficient to counteract a lack of facility with children.

Children's Testimony: One DR stated that there may be difficulties in proving a case before the CRDD if a child's behaviour is "problematic", even though such behaviour may be due to trauma or persecution. Some interviewees felt that IRB Members did not understand the impact of trauma, personality and cultural background on a child's testimony. One Member stated that she would normally rely on the counsel and DR to give guidance on a child's testimony, and that a good lawyer can help the child tell his or her story. If the child's material is too distressing, she relied on medical and expert testimony and would not question a child unless credibility was at stake or there were contradictions between the PIF and POE notes. Another Member found it particularly difficult when testimony from the DR contradicted the child's. A NGO interviewee stated that specific problems also arise in relation to documentary proof in children's cases. For example, many Honduran young people in Vancouver were illiterate or semi-literate and unable to produce documents or have knowledge of certain facts.

Credibility: Concern was expressed about credibility issues in relation to children. One IRB Member noted that assessment of credibility and evidence can be very difficult, and there was a lack of direction in these matters. The IRB's own detailed document on credibility contains no specific guidance on children other than one brief mention.⁶⁴ One

⁶⁴ "Nervousness caused by testifying before a tribunal, the trauma and other inherent difficulties associated with testifying about a trying event such as detention or torture, the claimant's experiences with officials in the home country, the claimant's young age... may play a role in creating confusion or misunderstanding." Ibid, at pp. 44-45.

DR felt that in some cases IRB Members showed a "positive prejudice" when assessing children's testimony, while others become overly preoccupied with minor points and inconsistencies. A finding of "no credible basis" in a refugee claim is very serious, as it means that the claimant may not apply under the Post Determination Refugee Claimants Class (PDRCC) for a risk of return review and may be deported, even if an application has been brought for judicial review. The Canadian Council for Refugees felt that legal aid payments for expert medical reports are inadequate and may result in reports which are lacking in substance and very similar one to another, and which thus tend to be discredited by the IRB.

Comment

In the refugee determination process, Child claimants face an arduous undertaking which will determine their future. UNHCR's 1997 *Guidelines* therefore recommend that "interviews should be conducted by specially qualified and trained representatives of the refugee determination authority" (para. 8.4). IRB Members who have a particular interest and/or experience with children will be better able to implement the *Children's Guidelines* and will be motivated to expand their skills and knowledge base. Specialist panels could help ensure that children's best interests are taken into account at hearings, as well as greater consistency of outcomes. Furthermore, since single member panels will be the rule in the future (under Bill C-11), it is all the more important that the IRB consider the development of this expertise.

Recommendations 22 and 23

22. Specialist IRB Members should be designated to hear children's refugee claims.
23. Consideration should be given to allocating a particular venue for hearing children's cases. The layout and decor should be informal.

5.4 Substantive Matters

While a discussion of the substantive aspects of refugee determination⁶⁵ is outside the scope of this report, interviewees offered some comments. According to an IRB policy officer, when the IRB's *Children's Guidelines* were drafted, priority attention was given to procedural and evidentiary issues. In contrast, the *Gender Guidelines* address substantive issues. Two IRB Members felt substantive guidelines on child claimants would be helpful, and one considered that the *Children's Guidelines* were "half measures" dealing mainly with administrative issues. She added that use of the CRC in decision-making is limited

⁶⁵ For discussion of this issue see: Sadoway, Geraldine, "Refugee Children Before the Immigration and Refugee Board" in *Refugee*, Vol. 15, No. 5, (1996); Bhabha, Jacqueline and Wendy Young, "Not Adults in Miniature: Separated Child Asylum Seekers and the New U.S. Guidelines", in *International Journal of Refugee Law*, Vol. 11, No. 1 (1999).

and tends to decline if training is not maintained. Two Members acknowledged they had received no training on the meaning of persecution with respect to children. The Canadian Council for Refugees has proposed that the IRB introduce substantive guidelines for children. One counsel commented that "*children are not seen as full status beings. Their refugee claims are not perceived as being as serious as adults.*" One counsel and former IRB Member felt that Members can be overly influenced by the position of the RCO.

In the determination of asylum claims of separated children, UNHCR's 1997 *Guidelines* call for greater regard to be given to objective factors, to the circumstances of a child's family and (if known) to the parent's perception of risk to the child. The 1997 *Guidelines* state: "*It should be further borne in mind that, under the Convention on the Rights of the Child, children are recognised certain specific human rights, and that the manner in which those rights may be violated as well as the nature of such violations may be different from those that may occur in the case of adults. Certain policies and practices constituting gross violations of specific rights of the child may, under certain circumstances, lead to situations that fall within the scope of the Refugee Convention.*"⁶⁶ The *UNHCR Handbook* notes that a "*liberal application of the benefit of the doubt*" may be required in certain cases of children.⁶⁷

The introduction of the *Children's Guidelines* was an innovative and positive step taken by the IRB. The IRB has made numerous determinations which recognise children as refugees for a variety of child and gender-specific reasons.⁶⁸ Recently, the U.S. Immigration and Naturalization Service introduced *Guidelines for Children's Asylum Claims*⁶⁹ covering procedural, evidentiary and substantive issues. They provide detailed guidance on setting the tone for interviewing children, building trust, child-sensitive questioning, active listening techniques, cross-cultural issues, a child's demeanour and credibility, and the impact of trauma, separation and stays in refugee camps, as well as a discussion of substantive issues.

Recommendation 24

24. The IRB Children's Guidelines should be expanded to include substantive issues and a fuller explanation of how to communicate with child claimants.

⁶⁶ UNHCR 1997 *Guidelines*, at para 8.7.

⁶⁷ *Handbook on Procedures and Criteria for Determining Refugee Status*. UNHCR, Geneva, 1988, para. 219.

⁶⁸ See Kelley, Ninette (IRB Member) "Canadian Refugee Determination Procedures and the Minor Claimant" a paper delivered at the third conference of the International Association of Refugee Law Judges, Ottawa, October 1998. The paper discusses the *Children's Guidelines* and substantive issues.

⁶⁹ "Guidelines for Children's Asylum Claims," U.S. Department of Justice, Immigration and Naturalization Service, 1999.

5.5 Training

This section reflects, for the most part, discussions with IRB training officers in Toronto.

The IRB's Working Group on Women and Children, which had been active in drafting the *Children's Guidelines* and *Gender Guidelines*, was dissolved after these documents were finalised. Currently there is no specific IRB forum for discussion of the implementation and monitoring of the *Children's Guidelines*.

When the *Children's Guidelines* were introduced in 1996 there was a half-day training session for IRB Members. Since 1996 there has been no specific national training on the *Children's Guidelines*. When new IRB Members are inducted they receive three weeks of training. The *Children's Guidelines* are covered in one half-day period along with the two other IRB guidelines. Most of this session focuses on the Designated Representative, alternative ways to gather evidence and making the proceedings more informal. Since some Members have no previous experience with refugee issues they must take in a considerable amount of information in a short period of time, of which the *Children's Guidelines* are one small part.

Members have ten additional training days each year, and may request training in special areas. Some training sessions have been offered, for example, on questioning torture victims and female claimants. No special training has been organized in relation to children, although this may have occurred at local level. At local levels regular monthly meetings of IRB Members provide opportunity to discuss issues arising from casework. Some trainers mentioned that despite the existence of the *Children's Guidelines*, children's cases need to be allocated on the basis of expertise. Those who show interest in children are more likely to handle these claims in a sensitive manner. The trainers stated they had not made use of the U.S. INS *Guidelines for Children's Asylum Claims*, but would shortly be meeting with INS trainers and would discuss the matter.

Comment

It appears that training connected with the child claimants could be reinforced, both to provide basic information about the IRB's *Children's Guidelines*, and to enable Members to acquire the necessary knowledge/skills connected to their implementation. This would include acquiring a better understanding of relevant child development issues, communicating with and questioning children, issues relating to child witnesses, the impact of violence, trauma, separation and exile on children, and cross-cultural matters.⁷⁰ Given the relatively low numbers of separated child claimants, it would be difficult to provide comprehensive training to all Members. However, particular Members could be identified to handle children's cases, and to receive such training. There is considerable

⁷⁰ The U.S. INS Guidelines call for a minimum of four hours initial training, followed by updates and monitoring of their implementation. In the U.K., asylum officers dealing with children's claims received on one occasion a three day course provided by a specialist social worker who worked with refugee children. In Germany, the Federal Office for Asylum has trained "Children's Commissioners" who specialize in child claimants.

documentation on relevant issues, and many Canadian professionals could be called upon to provide training.

Recommendation 25

25. IRB Members designated to hear children's cases should be provided with comprehensive training including: child development issues, communicating with children; children as witnesses; the impact of violence, trauma, exile and separation on children; and cross-cultural issues.

5.6 After a Negative Decision - Judicial Review and the PDRCC Process

A claimant who is refused refugee status may apply to Federal Court, within 15 days of receiving the written Notice of Decision, for permission to have the decision reviewed on points of law or mixed fact and law. If leave for judicial review is granted, the Court will examine the case and decide either to affirm the initial rejection or to return the case to the IRB for a new hearing before a different IRB Member (or Members). According to IRB statistics, only eight judicial reviews involving separated children were heard in the three years from 1998 to 2000. In the year 2000, of four judicial reviews, one was referred back to the CRDD, two were denied and one was abandoned. In 1999, two applications were denied, and in the year 1998, one was denied and one granted.

At the same time as applying for judicial review, a child or adult may apply, within 15 days, to the Post-Determination Refugee Claimant in Canada (PDRCC) Unit of Citizenship and Immigration Canada for an assessment of the risk to the applicant on return to the country of origin. If both judicial review and the PDRCC process are negative, steps to remove the person from Canada may begin.

This PDRCC review is carried out by specialist officers within CIC and is only available to rejected refugee claimants.⁷¹ The definition of risk for this review is confined to three areas: risk to life, other than because of inadequate health care; inhuman treatment; and excessive punishment. The risk must be personal to the applicant, i.e. not generalised among the population of the applicant's country, and must be present in all parts of the country.

There are no specific written criteria for evaluating risk in relation to a child applicant. However, the officer handling the case must take account of all factors submitted by the applicant, counsel and others. A senior PDRCC officer stated that because of the

⁷¹ PDRCC applications may not be made by rejected asylum-seekers whose claims were determined to have no credible basis, or who were excluded from protection pursuant to Art. 1F of the Refugee Convention, or who were convicted of serious criminal offences.

Supreme Court ruling in the *Baker* case, the best interests of children are considered, for example, in relation to possible forced recruitment or female genital mutilation. He also indicated that the absence of a child's parents in his or her home country would be taken into consideration, but the presence of other family members and their relation to the child will also be looked at. However, the risk must nonetheless be associated with one of the three factors. For example, a child who is without any caregiver in the home country could be considered at risk of inhuman treatment if the only placement possible were in an inadequate state institution.

Few PDRCC applications are approved (approximately 3-4% of total), and there is no statistical information on children's applications. Under Bill C-11, a "Pre-Removal Risk Assessment" (PRRA) will be available to failed refugee claimants and certain other categories of people facing removal from Canada.

Recommendations 26 - 28

26. Written guidelines should be developed to assist CIC officers in making a risk assessment in relation to a separated child. The guidelines should enumerate types of child-specific risks, and relate them to children's rights as outlined in the *Convention on the Rights of the Child*. Special consideration should be given to torture, inhuman treatment and excessive punishment as they relate to children.⁷²
27. Training on these guidelines should be given to CIC risk assessment officers.
28. A separated child should not be required to demonstrate a risk on return in all parts of the country of origin.

⁷² See Man, Nathalie, *Children, Torture and Power: the Torture of Children by States and Armed Opposition Groups*, World Organisation Against Torture and Save the Children UK, (2000).

5.7 Humanitarian and Compassionate Applications

A separated child may apply for permanent residence in Canada on Humanitarian and Compassionate grounds (H&C). This application may be made concurrently with a refugee claim, or subsequently. A fee of \$500 is charged to adults for processing an H&C application, and \$100 for applicants under 19 years of age. Specialist officers within CIC make H&C determinations, for which they have wide discretion, although they are guided by instructions contained in the Immigration Manual.⁷³ This Manual makes no reference, however, to the special circumstances of separated children. H&C applicants are, in effect, requesting an exemption from the requirement that a person seeking permanent residence apply from outside of Canada. The application does not have suspensive effect and a person whose refugee claim and PDRCC review are refused may be removed while the H&C application is pending. It may take a year or more for H&C applications to be decided.

Following the Supreme Court of Canada decision in the *Baker* case, officers making an H&C decision must consider the child's best interests. In that case, the Supreme Court found that the officer making the decision had not considered the interests of the applicant's children and this had "*constituted an unreasonable exercise of discretion*". The Justices concluded in relation to Article 3(1) of the CRC:

*"The certified question asks whether the best interests of children must be a primary consideration when assessing an application under s.114(2) and the Regulations. The principles discussed above indicate that, for the exercise of the discretion to fall within the standard of reasonableness, the decision-maker should consider children's best interests as an important factor, giving them substantial weight, and be alert, alive and sensitive to them. That is not to say that children's interests must always outweigh other considerations, or that there will not be other reasons for denying an H&C claim even when children's interests are given this consideration".*⁷⁴

Following the Court's decision in *Baker*, CIC issued an Operations Memorandum reflecting it.⁷⁵ The initial version of Bill C-11 required that H&C decisions take into account "the best interests of a child directly affected" (s.25(1)). Many advocates have urged that the Bill confirm, as per Article 3 of the CRC, that the best interests of the child "shall be a primary consideration" in all actions concerning children.

⁷³ Immigration Manual, "Inland Processing", Chapter 5: "Immigrant Applications in Canada Made on Humanitarian or Compassionate (H&C) Grounds".

⁷⁴ Op. cit., note 28.

⁷⁵ Operations Memorandum 00-08, "Inland Processing", July 10, 2000.

Recommendation 29

29. To promote consistent interpretation and decision-making, the elements of a best interests consideration and key factors to consider in cases of separated asylum-seeking children should be set out in Regulations under the new Immigration and Refugee Protection Act (Bill C-11).

5.8 *Permanent Residence Applications and Family Reunification*

All persons who are recognised as Convention refugees and who wish to apply for permanent resident status must do so within 180 days of receipt of the CRDD's positive decision. Applicants under 19 years of age pay a \$100 fee. While adults may include non-accompanying spouses and children on their applications, children may not include their parents. Neither may children sponsor their parents for admission to Canada until they reach the age of 19 (proposed to be lowered to 18 under Bill C-11). Even at that age, they must still meet the financial requirements to support their parents for a given period.

The *Convention on the Rights of the Child* provides that applications by parents or children to enter or leave a State for the purpose of family reunification are to be dealt with in a "positive, humane and expeditious manner" (Article 10). The UNHCR *Handbook* outlines the important principle of family unity (Chapter VI) and UNHCR's 1997 *Guidelines* state: "All attempts should be made to reunite the child with his/her family or other person to whom the child is close, when the best interest of the child would be met with such a reunion". Yet states have traditionally been keen to discourage the so-called "anchor child" phenomenon, where parents send children first in the hope of being able to join them later, and have therefore limited access to family reunification. However, as evidenced in a 1997 report published by the Intergovernmental Consultations, states have not provided other than anecdotal evidence of this phenomenon.⁷⁶

Some European states (Sweden, Norway and Finland) permit family reunification for Convention refugee children, but in practice this right is often difficult to realise. Most other states do not permit it.⁷⁷ Furthermore in Europe, very few separated children are recognised as Convention refugees; they tend to be granted a lesser status to which no family reunification rights are attached. However, the European Union is considering a draft directive (legislation that is binding on member states) on family reunification. The current draft proposes, in line with UNHCR's position, that separated children who are recognised as refugees in an EU state may be joined there by parents or grandparents, or, in their absence, other family members.

⁷⁶ Op. cit., note 13.

⁷⁷ Ruxton, Sandy, *Separated Children Seeking Asylum in Europe: A Programme for Action*, Save the Children and UNHCR (2000), pp. 85-88.

Recommendation 30

30. The right to reunification with nuclear family members should extend to separated children who are recognised as Convention refugees.

6. GUARDIANSHIP AND CARE OF SEPARATED CHILDREN

6.1 Introduction

The following provides an overview of some key international instruments and guidelines which should inform the provision of care for separated children.

Convention on the Rights of the Child

Provincial welfare authorities are responsible for ensuring that their services are compatible with the *Convention on the Rights of the Child*. Several articles are particularly relevant. Article 1 defines a child as "every human being under the age of 18 unless, under the law applicable to the child, majority is attained earlier". Under Article 2(1), State Parties must ensure that all children enjoy the rights set out in the CRC, "irrespective of 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". Article 3(1) states that "in all actions concerning children... the best interests of the child shall be a primary consideration". Article 3(2) requires State Parties to "ensure the child such protection and care as is necessary for his or her well-being". Article 3(3) underlines that institutions providing care and protection for children must be properly regulated and supervised and employ competent staff.

Article 12(1) of the CRC provides that a child should be able freely to express his or her views in all matters affecting him or her, and these views should be "given due weight in accordance with the age and maturity of the child". Article 19 requires states to protect children from abuse, violence and neglect as well as to institute measures for the "identification, reporting, referral, investigation, treatment and follow-up of instances of child maltreatment..." Finally, under Article 20, states are to provide alternative care for any child who is "temporarily or permanently deprived of this or her family environment". Such care could include foster placement, kafalah of Islamic law, adoption or if required, institutional care. This alternative care should pay due regard to a child's ethnic, religious, cultural and linguistic background. Article 39 refers to the rehabilitation of child victims of war and violence.

1996 Hague Convention for the Protection of Children

The full name of this Convention is the *Hague Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in Respect of Parental Responsibility and Measures for the Protection of Children*. It comes into force following ratification by three countries. *The Hague Convention for the Protection of Children* is based on the premise that it is primarily the authorities of the country of the child's "habitual residence" who have jurisdiction over a child, and these authorities have competence to take measures to protect the child, regardless of the child's legal status. For the purposes of this Convention,

in the case of a separated child claiming refugee status, the country of asylum is considered the country of habitual residence. According to the General-Secretary of the Hague Conference⁷⁸, this Convention provides the basic infrastructure to:

- *"facilitate the expeditious determination of the legal status of separated refugee children and the appointment of a legal guardian or custodian for such children;*
- *provide a mechanism for international co-operation so as to facilitate family reunification;*
- *help avoid involuntary deportation of such children to their countries of origin where this would conflict with their basic rights;*
- *to the extent that deportation is inevitable, arrange for it in circumstances such that the child should be properly accompanied and protected".*⁷⁹

Canada has not yet acceded to this Convention. A group composed of federal, provincial and territorial authorities has been set up to work towards a framework for its ratification and implementation. The Convention requires the establishment of a "Central Authority" responsible for co-operation under the Convention among relevant authorities within a country, as well as between countries. Implementation of this Convention would be a positive step towards providing national protection mechanisms for separated children. The Separated Children in Europe Program has been lobbying actively for its ratification by European states.

UNHCR

UNHCR's 1997 *Guidelines* provide for the appointment of a guardian or adviser⁸⁰ for each separated child, who will be responsible for ensuring that: *"the interests of the child are safeguarded, and that the child's legal, social, medical and psychological needs are appropriately covered... until a durable solution for the child has been identified and implemented"* (paragraph 5.7). In some European countries, guardians are appointed for separated children either under pre-existing guardianship mechanisms (Germany, Italy) or through specially developed systems (Norway), or a combination of both (Netherlands). Within Europe the need for legal guardianship is generally accepted, though practice is uneven and the significant increases in the numbers of separated children have put pressure on existing resources.

UNHCR's 1997 *Guidelines* also set out the forms of assessment, placement and care that separated asylum-seeking children should receive, with particular attention to cultural needs, to the impact of separation from parents, and to the recovery of children who have been the victims of war, persecution and violence. Co-operation among agencies and across disciplines is encouraged.

⁷⁸ The Hague Conference on Private International Law is an independent intergovernmental organisation. Its purpose, according to its statutes is to *"work towards the progressive unification of the rules of private international law"*.

⁷⁹ Van Loon, Hans, "Aspects of Human Rights and Children's Rights", Bellagio Conference on Separated Refugee Minors: Issues in Repatriation, January 1997, Bellagio, Italy.

⁸⁰ This is specific to the UK where a Panel of Advisers for Separated Refugee Children exists to offer initial information, advocacy and support to separated children. It is a non-statutory service funded by the UK Home Office.

Recommendation 31

31. Canada should ratify and implement the 1996 Hague Convention on the Protection of Children. Training should be provided to child welfare and immigration authorities on this Convention.

Federal-Provincial Background

In Canada, the provincial and territorial governments have jurisdiction in matters of child protection and social services. Each province has its own child protection, child welfare and guardianship legislation, and the care provided to separated children seeking asylum in Canada therefore inevitably varies from one province to another. In addition, the provision of social services to refugee claimants is influenced by the transfer of funds from the federal government. In 1994-1995, the federal government significantly reduced these transfer payments and eliminated the Canada Assistance Program, which had been a cost-sharing arrangement between federal and provincial levels. It was replaced by a smaller programme, the Canadian Health and Social Transfer, which combines health and education funding. As a consequence there were reductions in provincial social services in such areas as subsidised housing, child support programmes and counselling. Over the last two years, the federal government has accumulated a budget surplus and has begun discussions with the provinces on how to reinvest in social spending. This has resulted in initiatives such as the Social Union Framework Agreement, the National Children's Agenda and the Child Tax Benefit.

Nonetheless, according to the Child Welfare League of Canada (CWLC),⁸¹ reductions in social spending continue at the provincial level. One consequence of the reductions in transfer payments in 1994 was an increase in the number of (Canadian) children being taken into public care. In 1996 there were 40,000 children in care, and as of 2001 there are between 70,000 and 75,000. The foster care systems across Canada are struggling to keep up with the demand, and provincial child welfare agencies are having difficulties recruiting new foster parents.

Against this backdrop, in 2000 the provinces of B.C., Ontario and Québec asked the federal government to assume a greater portion of the costs associated with refugee claimants. To date, the federal government has taken the position that child welfare is a provincial responsibility and consequently provinces should pay for the care of separated asylum-seeking children, unless there are extraordinary circumstances for which special relief would be provided. For example, in B.C., unusual costs related to the Chinese migrant children during 1999 and 2000 were reimbursed by the federal government.

⁸¹ A national NGO with members drawn from provincial and federal government agencies, NGOs and academic research programs.

Social Work Practice

Provincial child welfare laws do not exclude non-national or non-resident children. In the past, a tiny percentage of children in care were migrant children; CWLC estimates about 15 of every 1000 children. Separated asylum-seeking children are a relatively recent and relatively small concern for child welfare agencies. By nature, the arrival of asylum-seeking children cannot be predicted and thus their needs are difficult to include in budget and planning processes. Some child welfare agencies, members of the CWLC, have expressed concern about separated children, and as a consequence CWLC intends to be more active in advocating on their behalf with member agencies and authorities.

The Canadian Council for Refugees expressed the view that social service agencies tend to be unfamiliar with populations of refugee and migrant children. As a consequence they may be unaware of the particular needs of refugee and asylum-seeking children, and they may not fully understand the refugee issues which bring such children to Canada, and which dramatically affect their daily lives. Some social workers and child welfare agencies have developed expertise in these areas by virtue of having taken separated children into care, but many workers may not get the support and training they need to work effectively with separated children. In some metropolitan areas there has been an investment in "cultural competence" training, but this is limited in scope. Social workers do not ordinarily possess knowledge of immigration and refugee law and policy, yet basic knowledge of these matters is essential for working with asylum-seeking children. Finally, there may be erroneous perceptions that refugee claimant children do not fall under the jurisdiction of provincial child welfare because they are part of a federal process - the refugee determination procedure.

International Social Service

International Social Service Canada (ISS Canada) is a national non-governmental organization that provides linkages to social service agencies worldwide. As part of an international network, ISS Canada helps resolve individual and family problems resulting from the movement of people across national borders. ISS Canada, and the world-wide network, have considerable experience in working with separated children, both refugee claimants and other migrant children. ISS Canada assists child welfare agencies and government departments in Canada in arranging for social investigations, personal service of official documents, and home study assessments to be completed in countries of origin with relatives of separated children, where these services would not put the family or the child at risk. The reports obtained by ISS Canada in cooperation with ISS network partners are intended to help agencies and government departments in Canada in planning and making decisions and recommendations in the best interests of children. If children are returned to the country of origin, a period of follow-up services to support the family reunification may be requested.

ISS Canada is particularly concerned about the manner in which the return of children to countries of origin takes place, and about the need to ensure that they are returned to a safe and appropriate environment. ISS Canada is of the view that separated children

should be treated in the same manner as "abandoned" children in need of protection, and placed under the guardianship of the competent child welfare authority. If provincial or territorial child welfare authorities do not assume guardianship of a child, then there is no "necessary tension" or balancing between the child welfare and immigration concerns, i.e. there is no one with the authority to question whether a CIC decision to return a child is in the child's "best interests".

Recommendations 32 - 36

32. CIC and provincial child welfare authorities should clarify their respective roles with regard to separated asylum-seeking children.
33. Clear protocols involving CIC, provincial child welfare authorities and other agencies should delineate tasks with regard to separated asylum-seeking children.
34. Provincial child welfare authorities should develop clear regulations and guidelines on guardianship and care for separated asylum-seeking children. Inter-provincial dialogue could facilitate learning and consistency of approach across Canada.
35. Social workers and child care workers dealing with separated asylum-seeking children should receive training in refugee issues, cultural competence and basic human rights and immigration law as these relate to separated children.
36. Child welfare authorities and CIC should work with International Social Service Canada or other suitable agencies to ensure appropriate measures for care and protection of children who are being returned to countries of origin.

The remainder of this section looks at the care of separated children in the three provinces under examination.

6.2 British Columbia

British Columbia (B.C.) receives approximately 12% of the refugee claimants in Canada. According to the IRB Vancouver, refugee claims by separated children over the past three years in that province were as follows.⁸²

1998 - 63

1999 - 144

2000 - 50

The principal countries of origin were: China, Sri Lanka, Mexico, Honduras, Iran, Afghanistan and Somalia. The Chinese arrivals in 1999 account for the significant increase in that year. The Ministry of Children and Family Development (MCFD) is responsible for child protection and support services within the province for children up until the age of 19. The MCFD established its Migrant Services Team in response to the Chinese arrivals, but the Team now has a mandate for all separated refugee-claimant children in the province and acts as the Designated Representative for many children at IRB hearings. At the time of the interview (early February 2001), the Migrant Services Team had a guardianship caseload of about 20 children. According to the Child Welfare League of Canada, the number of children in care in B.C. has risen in the last few years from 6,000 to 11,000, so there are considerable pressures within the system as a whole.

Legislation

In British Columbia, two laws provide protection for separated children: the Child, Family and Community Service Act 1996 (CFCSA) and the Family Relations Act (FRA). The CFCSA states that "*the Act must be interpreted and administered so that the safety and well-being of children are the paramount considerations*" (s.2), and sets out relevant factors to be considered when determining a child's best interests (s.4(1)). The CFCSA allows MCFD to take charge of children for an initial period of 72 hours in order to investigate a child's circumstances (s.25) after which, if the child remains in Canada, and circumstances warrant, the child may formally be taken into care or removed from care. Section 13 of the CFCSA states that a child needs protection in a number of circumstances including if: "*the child's parent is unable or unwilling to care for the child and has not made adequate provision for the child's care*" (para.13(10)(h)).

The Family Relations Act (FRA) concerns *inter alia* the guardianship of children. Under s.29 the Ministry may assume guardianship of a child who is orphaned, or when a child

⁸² However, these statistics may not represent the real numbers of separated children in B.C.. Recently the Migrant Services Unit has become aware of the presence of considerable numbers of adolescents over 16 years of age who have come across the border from the U.S. and made inland refugee claims. They have been referred by the IRB to local Ministry offices but were not taken into care. Rather, they were then referred to benefit offices to make applications for welfare. Most of these adolescents come from Mexico, China, India, Korea and Central America.

has no guardian, or the appointed guardian refuses to act or is incompetent. Under this provision, guardianship is assumed without the need to go to court. For this reason the FRA was used in preference to the CFSA for the Chinese children. It is the intention of the Migrant Services Team to use the FRA for group arrivals and to assess individual separated children on a case-by-case basis to determine which legislation is most applicable.

Where a separated child has an informal caregiver, for example a relative or family friend, CIC may request a letter of "no objection" stating that the arrangement is satisfactory to the Director of Child Protection. MCFD staff will conduct a home assessment and, if satisfied, will provide the requested letter. MCFD is unlikely to be involved in follow-up, unless acting as the child's Designated Representative. The de-facto guardian has the authority to act on the child's behalf, for example for medical care or admission to school.

Removals

With regard to the removal of separated children, MCFD took the position that it would not stand in the way of removal of the Chinese children, but did express concern about the possibility that they could be detained or fined on return, owing to their illegal departure. CIC provided MCFD with a "letter of comfort" setting out CIC's position that there was "no information which would indicate that minors would be subject to ill-harm on return".⁸³ CIC suspended the removal of some Chinese children pending the outcome of applications to remain on Humanitarian and Compassionate grounds.

⁸³ Op. cit., note 56, p.14.

Separated Latin American Children in British Columbia

Settlement workers and a social worker in Vancouver related their experience with adolescents aged 15-17 from Mexico, Guatemala, El Salvador and Honduras. The Honduran children have gained national attention because of alleged involvement in drug dealing.

These adolescents come mainly from impoverished rural backgrounds. They travel through Mexico and the U.S. to Canada using a variety of means: on foot, hitchhiking, train-hopping. They often work to survive while in transit. For those crossing through Guatemala and into Mexico, the trip can be hazardous, and there have been reports of abuse, disappearances and killings. They usually cross the Seattle-Vancouver border illegally, and many make a refugee claim inland only after being apprehended by authorities. Some youngsters are pushed to Canada by abject poverty; others claim political persecution. For instance, Honduran peasant children cited persecuting by the military which, as a large landowner, resisted peasants' efforts to organize and form co-operatives. Aboriginal children from Chiapas in Mexico fled civil conflict which was ongoing there for some time. Some interviewees linked an influx of 300 or more Honduran youth to the devastation wrought in Honduras in November 1998 by Hurricane Mitch.

Once in Canada, many Honduran adolescents are referred to benefit offices to apply for welfare, though this is difficult without a legal guardian and results in some claiming to be 19 years of age, even when they are younger. Many live without contact with agencies, in very poor accommodation, with extended family members or friends. Most feel responsible to send money home to their families. Because youth are subject to lighter sanctions than adults, many are recruited by older Hondurans to sell drugs. According to the social workers interviewed, the adolescents tend to be fairly naive, lacking in "street-sense," and often sell drugs openly. As a result, they are frequently arrested. Many have limited literacy, little or no experience in school, and feel intimidated and are often perceived as trouble-makers, if they do attend school. There is a lack of Spanish speaking foster-care for these young people and generally the Ministry of Children and Family Development is little involved in providing for them, even though they would fall under the Ministry's mandate. A guardianship social worker who had worked with Honduran youth stated that specialised services are needed to provide culturally appropriate care and to work with extended families.

The youngsters have little or no education and have difficulty giving oral testimony before the IRB or providing any documentary evidence. Their Designated Representative is often someone who is not known to them. The Vancouver Bar has expressed concern about the quality of legal representation some are receiving.

Recommendations 37 and 38

37. The Migrant Services Team established by the British Columbia Ministry of Children and Family Development (MCFD) should be maintained. This raises the profile of separated children within child welfare communities and should facilitate the development of needed expertise.
38. MCFD should develop a comprehensive approach to provision of services to separated children in British Columbia, as it appears that some may not be receiving MCFD support. MCFD and CIC should continue to work together to enhance existing referral mechanisms to ensure more consistent referral of separated children to the Migrant Services Team.

6.3 Ontario

Ontario receives 45% of all refugee claimants in Canada and probably also receives the greatest proportion of separated children. Statistics from the IRB office in Toronto indicate that in the year 2000, a total of 265 claims by separated children were referred to the IRB. Of these, 48% were girls. The main countries of origin, in order of magnitude, were Sri Lanka, Somalia, China, the Democratic Republic of Congo, Angola, Argentina and Nigeria.

Child welfare services in Ontario are provided by a network of 52 Children's Aid Societies, which are not-for-profit agencies funded by the provincial government and contracted by the Ministry of Community and Social Service to act under the Children and Family Services Act of 1984 (CFSA). Pressure on child welfare services is also a problem in Ontario and the number of children in public care has risen sharply since 1995. Under the CFSA, Children's Aid Societies in Ontario have statutory child protection duties only in relation to children under 16 years of age. Under the CFSA (s.72), Immigration Officers and other professionals have a duty to report any child under 16 whom they believe may be in need of protection. Thus children can be referred to a CAS from any Port of Entry as well as by the IRB. 16 and 17 year old separated children do not receive assistance and care from CAS. Some will be cared for informally in their communities, others by NGOs and still others survive on welfare on their own or with other young people.

The Ontario Association of Children's Aid Societies, which represents the local Societies, has lobbied without success for many years to expand the CAS mandate to include children aged 16 and 17, in line with the *Convention on the Rights of the Child*.

Child Welfare Legislation and Wardship (Guardianship)

Section 1(A) of the CFSA sets out the purposes of the Act, the principal one being "to promote the best interests, protection and well being of children". Section 37(2) defines the circumstances in which a child would be considered in need of protection. This includes

where *"the child has been abandoned, the child's parent has died or is unavailable to exercise his or her custodial rights over the child and has not made adequate provision for the child's care and custody"*. The circumstances to be considered when determining best interests in relation to a child protection order are listed in s.37(3). The Act permits a Children's Aid Society to take a child into care for five days before asking the court for an "Interim Care and Custody" order. The CAS must make reasonable efforts to contact the child's parents, and if a child remains in CAS care, the next step would normally be an application for temporary or society wardship (s.57) (1.2)) for an initial period up to 12 months. Crown or permanent wardship (s.57(1.3)) is also available when there is no hope of family reunification. Wardship would remain until the child reaches 18 years of age. After age 18, the youth becomes eligible for Extended Care Maintenance until the age of 21 (social work support and financial assistance).

Technically, under the CFSA, a 16 or 17 year old could enter into a voluntary care and services agreement with a CAS. Most CAS would not initiate this process, but a child could do so. Alternately, there are provincial special needs services (e.g. outreach, guidance and care) available under the CFSA for which 16 - 17 year olds could qualify. According to the Child Welfare League of Canada, the provincial government cannot oblige CAS to provide care to this age group, but could encourage them to do so. Cost is clearly the disincentive. Furthermore, all 16 and 17 year olds, who are in need of protection in Ontario are in this situation - it is not limited to separated asylum-seeking children. However, the latter could be seen as especially vulnerable.

A CCR representative working in a Toronto-based refugee NGO expressed particular concern about the plight of 16 and 17 year olds. He cited the example of Angolan children living on their own on welfare, in destitute circumstances and lacking basic necessities. Other children under 16 have been left in the care of very young adults with few resources to care for them. He was caring for three Angolan siblings aged 13-17. The children under 16 had not been reported by CIC to a CAS, since they were accompanied by a 17 year-old. When the NGO official contacted a child welfare agency he was informed that if the children went into foster care, they would have to be split up, because the eldest was over 16 years of age.

Children's Aid Societies: the example of Peel

Peel CAS, which has Pearson International Airport within its jurisdiction, looks after many separated children. Between November 1999 and February 2001, Peel CAS took care of 20 separated children, aged 6 to 15, from Africa, the Caribbean, Europe and Asia. Not all were refugee claimants. Recently a Peel Court informed Peel CAS that they would not grant society or crown wardship until a separated child becomes a permanent resident in Canada. This may leave children without a guardian, since an Interim Care and Custody order does not grant the CAS parental authority. Normally children in the care of the Peel CAS are placed in foster care. However, like all agencies caring for separated asylum-seeking children, the Peel CAS incurs additional costs related to their particular situation,

such as interpreters' fees, fees for Humanitarian and Compassionate applications, medical care not covered by the IHP, use of ISS services, and long-distance calls.

Access to education is frequently problematic. Because student authorisations are available to refugee claimants there may be pressure for a child to make a claim regardless of his or her situation. When children lack documents, school registration can be difficult. The Peel CAS social worker who has responsibility for separated children considered that, prior to his appointment, the immigration status of the children had been neglected and some children had gone for considerable periods without any refugee or other applications being submitted. He suggested this had been due to a lack of awareness within child welfare agencies of immigration and refugee law and procedures.

Migrant Children's Task Force

Several governmental and non-governmental agencies met on a number of occasions in late 2000 and 2001 to address the issues raised by the detention of 17 Chinese children in Ontario during 2000, and the gaps in provision of services for separated asylum-seeking children. The Task Force included: UNHCR, CIC Ontario, the Ministry of Community and Social Service, Ontario Association of Children's Aid Society, the Office of Child and Family Service Advocacy, the Ministry of Correctional Services, Canadian Council for Refugees, two Community Legal Clinics, ONTCHILD, Children's Mental Health Ontario and Ontario Association of Residences Treating Youth.

The immediate focus of the task force was to find appropriate alternative accommodation for the Chinese youth who were detained at Celebrity Inn, and to identify mechanisms to ensure that their basic needs were met. A broader concern was to identify and address gaps in the care and treatment of separated children in Ontario and find alternatives to detention for such separated children in the future. To this end, two Protocols were drafted by the task force for discussion, but were not finalised. The first draft Protocol deals with children who are under 16, who are primarily the responsibility of the CAS. The second deals with children who are 16 and 17. Both Protocols are guided by internationally accepted protection principles and stress the need for the overall assessment of the child's situation, background and needs, to ensure that proper safeguards are in place and to assess the appropriateness of detention. The second Protocol calls for the appointment of a 'case manager' at the outset to ensure that support is offered to the child upon arrival, and that detention is considered as a last resort. The case manager would act as a liaison with CIC and other interested agencies to conduct a comprehensive assessment of the child and provide suitable care and accommodation. Accommodation was identified as a key problem. COSTI, a shelter for refugee claimants, may be able to provide very limited accommodation for separated young people aged 16 and 17, but only for three week periods. CIC Ontario might be willing to pay for a comprehensive assessment and a per diem rate for 16 and 17 year olds, but ongoing case management would not be covered. Clearly these limited responses would not meet the needs of all 16 and 17 year old separated asylum-seeking children in Ontario. The success of the Protocols would therefore depend on a constructive dialogue between the federal and provincial governments to resolve jurisdictional and cost-sharing issues.

Jurisdictional issues

As in other provinces, there are jurisdictional tensions between federal immigration law and provincial child welfare interests. Two court cases during 2000 illustrated this. In the first, Windsor-Essex CAS and the Ontario Children's Lawyer (Attorney General's Office) sought interim care and custody orders for Chinese children under 16 who were held under an immigration warrant in a young offenders facility in Windsor, with a view to removing the children from detention and taking them into care. The Ontario Superior Court refused the application on the grounds that Children's Aid did not have jurisdiction over these children because under the CFSA they were not considered "*ordinarily resident*" in Essex (or Ontario) and also found it "*inconceivable that the children would be at risk of harm while in detention*". On appeal to the Ontario Superior Court of Justice, the Children's Lawyer argued that the CFSA is paramount in matters of child protection. The appeal failed and the court stated that "*a provincial statute cannot be paramount to a federal statute. It might be theoretically argued that jurisdiction is concurrent, but not paramount... Further, since the ultimate effect of permitting an apprehension under the CFSA would be to effectively go around a warrant issued under appropriate jurisdiction in an immigration matter, I am not persuaded that this is appropriate and should be permitted to happen.*"⁸⁴ However, the court did conclude that the first judgement was in error in finding that the CAS did not have jurisdiction over the children. In any event the matter was moot by the time of the appeal because the children had been removed from the jurisdiction of Windsor-Essex CAS and had been released from detention. Nonetheless, some interviewees felt that the jurisdictional issue addressed in this case could and should be tested again before the courts.

A second case, a *Habeas Corpus* application, was decided in July 2000. Twelve Chinese children detained at Celebrity Inn asked the Ontario Superior Court for release from detention. Madame Justice Chapnik dismissed the application, finding that the court lacked jurisdiction and that the matter would more appropriately be dealt with at Federal Court. However, she expressed serious concern about the conditions and length of detention, and recommended that immigration officials consider other forms of housing for the children. She stated: "*If immigration officials feel compelled to detain these minors, then, in my view, it is imperative that they put in place the proper conditions of detention that accord with Canada's commitments as a signatory to the UN Convention on the Rights of the Child.*"⁸⁵

⁸⁴ Windsor-Essex C.A.S. v. C.C., J.G. and X.H. and X.C., (2000) 11 Imm.L.R. (3d) 38; [2000] O.J. No. 4991 (Quicklaw).

⁸⁵ Gao v. Canada (Minister of Citizenship and Immigration), (2000) 7 Imm.L.R. (3d) 21; [2000] O.J. No. 2784 (Quicklaw).

Recommendations 39 - 42

39. The CRC defines a child as a person under the age of 18, unless the applicable law provides otherwise. The age of majority in Ontario remains 18. The mandate of Ontario's Children's Aid Societies should therefore be extended to apply to 16 and 17 year olds.
40. Until and unless the mandate of the CAS is amended, CIC should refer all separated children under 16 years of age to the appropriate CAS.
41. CAS should take steps to identify and respond positively to applications by separated 16 and 17 year olds to enter into a voluntary care and services agreement or who request special needs services.
42. Sibling groups which include children under 16 should not be split, and all siblings should be provided with care by CAS.

6.4 Québec

Québec receives around 35% of refugee claimants in Canada. The majority of separated children in Québec are from Congo Brazzaville, the Democratic Republic of Congo, Angola, Rwanda, Guinea, Sri Lanka, India and Pakistan, and are in the Montréal area.⁸⁶

Access to Services

The Service d'Aide aux Réfugiés et Immigrants de Montréal Métropolitain (SARIMM) is a para-public organisation (mandated by the Ministry of Social Services). It has existed for over 30 years, and is attached to a local social services centre. Its mandate is to provide social work assistance to refugees and immigrants in the greater Montréal area. SARIMM also has an agreement with the IRB in Montréal to act as the Designated Representative for separated refugee claimant children. SARIMM provides psycho-social support to separated children and ensures appropriate placement or accommodation and access to education and health services. Each separated child has two social workers: one to act as the Designated Representative and the other to carry out traditional social work functions. As of January 2001, SARIMM had open files on 298 separated children under 18, of whom 41% were girls. However, they could not readily supply information on the number of children referred to them per year. SARIMM also works with children who are with a non-parental relative and will carry out a home assessment to be satisfied the child is receiving appropriate care. If not satisfied with a child's situation they will find an alternative placement. SARIMM estimates that 50% of the unaccompanied child refugee claimants are without any relative in Québec.

⁸⁶ See Montgomery *et al.*, *op. cit.*, *supra*, note 16. See also, Fiorino, Giovanni "La Protection des Enfants et des Jeunes Réfugiés: Etat de Situation au Québec pour les Enfants Mineur Non Accompagnés", Canadian Council for Refugees Conference, June 2000. Available from CCR.

All children who claim refugee status in Québec must apply to the Québec Ministère des Relations avec les Citoyens et de l'Immigration (MRCI) for a "*Certificat de Situation Statutaire*." This is an attestation that the person is a refugee claimant and permits access to provincial services such as health, education, legal aid and social services. All separated children who apply for an attestation will be referred to SARIMM, if that has not already been done. At the port of entry CIC should refer separated children to SARIMM during working hours and, out of working hours, to a regional Director of Youth Protection (Centre Jeunesse). It appears the system works quite effectively to ensure that children who wish to apply for refugee status are able to do so.

Types of Placement Available

SARIMM works closely with the Centre Jeunesse of Montréal (attached to the Ministry of Social Affairs) which provides various placements for children in care, e.g. foster care, group homes, and semi-independent living. SARIMM has contacts with various ethnic communities and is often able to arrange placement of a child in a "famille d'entraide." In this situation, the family is authorized to care for a particular child and receives social work assistance, family allowance, and a lesser amount of financial support than a "regular" foster care giver. Most separated asylum-seeking children live either with "familles d'entraide," or independently in apartments. In the latter case, SARIMM makes a weekly payment to the young person. Few children are in traditional foster families or group homes run by the Centre Jeunesse. However, one group home does reserve beds for new arrivals.

SARIMM was actively involved in 1999/2000 with the detained Chinese and Pakistani children, for whom it acted as the Designated Representative. Its social workers were critical of the length and conditions of the children's detention. They collaborated with the Centre Jeunesse and the Director of Youth Protection who arranged placements for the children which could be available upon their release. The NGO Action Réfugiés Montréal, which works with detainees, felt there could nonetheless have been more action on the part of child welfare authorities in relation to the detained children.

SARIMM also faces resource constraints. The agency has only 15 social workers on staff and they have heavy caseloads, as many as 150 cases at one time. SARIMM considers it is insufficiently funded. Resources are also an issue for the "familles d'entraide", which receive less financial support to care for children than regular foster families, yet the needs of separated asylum-seeking children are the same (or greater) than those of other children. Since many "familles d'entraide" are themselves newcomers, their family income is often modest.

Child Protection Law and Guardianship

While SARIMM provides frontline child welfare services, separated asylum-seeking children in Québec have no one who acts as their legal guardian to ensure their best interests are protected. There is common agreement that in this respect there is a "vide

juridique" (legal vacuum). Guardianship may however be conferred under the Québec Civil Code or the Youth Protection Act (YPA).

Under the YPA, the Directors of Youth Protection (DYP) are responsible for child protection in Québec. There are 16 regional Directors of Youth Protection attached to the regional Centres Jeunesse. The Youth Protection Act applies to all children in Québec under 18 years of age, irrespective of their immigration status. Section 3 of the YPA provides: "Decisions made under this Act must be in the interest of the child and respect his rights," and outlines the aspects that must be taken into account. Under s.38, child protection measures would be required where the "security or development of a child is considered to be in danger" for one or more of eight reasons including where "his parents are deceased or do not, in fact, assume responsibility for his care, maintenance or education" (s.38(a)). Professionals providing assistance to children (and this would include Immigration Officers) are required to signal any concerns that a child's security or development are at risk to the DYP (s.39).⁸⁷ The DYP will investigate and, if satisfied that the conditions are met, take the child into care through voluntary or involuntary measures. SARIMM social workers confirmed they would signal the DYP if, for example, a child was in an unsatisfactory or abusive informal care arrangement and the caregiver did not accept the child being removed to an alternative placement. Once a protection order is applied, the DYP becomes the "legal respondent" of the child. The parents do not lose parental authority but they are not in a position to exercise it as long as the protection order is in place.

According to the Montréal Director of Youth Protection, the fact of being a separated asylum-seeking child is not in itself sufficient to bring a child under youth protection. The totality of the child's circumstances must be considered, such as age and vulnerability, the presence of family members in Québec, and, more recently, the involvement of traffickers. The majority of separated children are adolescents; over the age of 14 a child can give consent to access child welfare services. These facts, combined with the presence of SARIMM as a front-line service agency, mean a separated asylum-seeking child will rarely be considered in need of the DYP's intervention.

Detention

Many interviewees raised the experience in 1999/2000 in Québec with Chinese and Pakistani separated children aged as young as five years. The youngest children were taken into care under DYP mandates, with the agreement of CIC. The others were detained. Many agencies and individuals expressed concern about their detention. However, the DYPs counsel was of the opinion that federal immigration law took precedence over the provincial Youth Protection Act. Thus the DYP was of the view it would be unable to take children from immigration detention into its protection, even where a tribunal made a ruling to that effect. It was reported to the researcher that an NGO made a complaint to the Québec Human and Youth Rights Commission (Commission des Droits de la Personne et des Droits de la Jeunesse) about the children's detention. The

Commission is mandated under the YPA (s.23) to, *inter alia*, investigate situations in which children's rights are alleged to have been violated. It appears the Commission did not pursue the complaint because it was also of the opinion that it did not have jurisdiction over children, although the courts have not clearly resolved these jurisdictional questions.

Inter-agency Discussions and Guardianship

Inter-agency discussions on separated children involving CIC Québec, SARIMM, the DYP, Centre Jeunesse, the Ministry of Social Services and the MRCI, took place in the mid-1990's, but were discontinued without resolution of the issue of guardianship. Discussions resumed after the 1999/2000 experience, and options which would provide for temporary guardianship for separated children are being looked at. Under the Québec Civil Code and the YPA, guardianship remains in effect until a child reaches 18 years of age. This was considered inappropriate, since a separated asylum-seeking child may not remain in Canada if the refugee claim and other applications are unsuccessful. The inter-agency group is considering the introduction of a legal provision for temporary guardianship which would apply until a child is granted permanent residence or removed from Canada. The group is considering whether this is best achieved by an amendment to the YPA or to the Civil Code, what would be the nature of the guardianship role, and who would carry out the role. It is also discussing a "mechanism for collaboration" which outlines the responsibilities of respective agencies for separated children.

Removals

SARIMM has indicated that it would contribute to a risk of return assessment for a child who was refused refugee status. It would also try to assess conditions in the child's home country and bring any concerns to CIC. However, it is clear that SARIMM lacks statutory authority to act in this respect. When questioned, the DYP was unclear what the proposed "temporary guardianship provisions" would entail in relation to removal of a child.

⁸⁷ Private citizens are also required to do so in the specific instance where they suspect a child is being physically or

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43. Mechanisms should be put in place to provide separated asylum-seeking children in Québec with guardianship on the same grounds as any other child without parents or legal guardian.
44. SARIMM should receive the necessary resources to enable it to fulfil its responsibilities to separated asylum-seeking children.
45. Separated asylum-seeking children have the same needs as other children in care. "Familles d'entraide" should receive the same financial support as other foster families.

7. CONCLUSION

There is an inherent tension between immigration and child welfare concerns. Canadian federal and provincial authorities should work together to reduce this tension, in the interest of the welfare of separated asylum-seeking children. Clear national standards and guidelines for practice concerning these children are needed. These should cover all actions, from identification at the port of entry, to settlement or removal, to ensure that account is taken of the particular vulnerability of separated children, and that Canadian practice is in line with international standards. The incorporation of all aspects of the *Convention on the Rights of the Child* into Canadian domestic law would be a strong indicator of Canada's commitment to the rights of children.

Future efforts can build on existing foundations. The issuance of the *IRB Guidelines on Child Claimants* was an important and innovative measure. The inclusion of a best interests test in certain aspects of Bill C-11 is a positive step towards the development of child welfare standards within immigration law. Child welfare in Canada is a mosaic of varying provisions, standards, definitions of risk and differing ages of entitlement to care and protection. The formulation of a truly coherent national policy with regard to separated asylum-seeking children will not be an easy task, in particular in the absence of a federal ministry responsible for child welfare. However, it is possible to conceive of national standards that can be implemented via different provincial mechanisms. The dedicated front line work carried out by many professionals, agencies, NGOs and volunteers can and should inform the development of effective policies.

Funding for suitable care and guardianship for separated asylum seeking children will remain a priority issue, part of a larger picture of resources needed for all children in public care. There are difficult questions related to how the federal and provincial governments share the costs of services for refugee claimants, and there is an overarching political issue regarding transfer payments from the federal to the provincial governments for health and social services. Refugee claimants are only one part of this broad issue. The challenge of improving provision of services for separated asylum-seeking children must be viewed within this context.

This report is a small contribution toward clarifying and improving the situation of separated children and adolescents claiming refugee status in Canada, and promoting their rights under international and national law. In addition to inter-departmental and inter-agency co-operation at federal and provincial levels, further research is needed in a number of areas, including (but not limited to): the jurisdictional tension between federal immigration law and provincial child welfare legislation; interpretation of the notion of children's best interests in the context of separated asylum-seeking children; the extent to which separated children in Canada are victims of trafficking; the position of undocumented separated children living "underground" in Canada; the situation of separated children in the prairie and maritime provinces, not at all investigated by this report.

This report contains 45 recommendations, some of which are quite technical. Readers interested in the development of policy and practice responsive to the needs of separated

asylum-seeking children are encouraged to study and comment on these recommendations, which relate to Canada's international obligations, immigration and refugee law and policy, care and guardianship and federal-provincial collaboration.

Annex i. Abbreviations

B.C.	British Columbia
CAS	Children's Aid Society
CCR	Canadian Council for Refugees
CIC	Citizenship and Immigration Canada
CRDD	Convention Refugee Determination Division (IRB)
CFCSA	Child, Family and Community Services Act, British Columbia
CFSA	Child and Family Services Act, Ontario
Children's Guidelines	IRB Guidelines on Child Refugee Claimants
CRC	UN Convention on the Rights of the Child
CWLC	Child Welfare League of Canada
DYP	Director of Youth Protection, Québec
DR	Designated Representative
FRA	Family Relations Act, British Columbia
H&C	Humanitarian and Compassionate
IO	Immigration Officer
IRB	Immigration and Refugee Board
ISS	International Social Service
MCFD	Ministry of Children and Family Development, British Columbia
MRCI	Ministère des Relations avec les Citoyens et de l'Immigration (Québec)
NGO	Non-Governmental Organization
OACAS	Ontario Association of Children's Aid Societies
PIF	Personal Information Form
POE	Port of Entry
PDRCC	Post Determination Refugee Claimants in Canada
Refugee Convention	1951 Convention Relating to the Status of Refugees
RCO	Refugee Claim Officer
SARIMM	Service d'Aide aux Réfugiés et Immigrants de Montréal Métropolitain
SIO	Senior Immigration Officer
UNHCR	United Nations High Commissioner for Refugees
YPA	Youth Protection Act, Québec

Annex ii: List of Agencies/Individuals Consulted

1. Citizenship and Immigration Canada - National Headquarters - Refugees Branch and Strategic Planning Policy and Research Branch - and regional offices in British Columbia, Ontario and Québec. Interviews were held with officials responsible for port of entry, removals, detention, risk of return reviews, H&C applications and resettlement.
2. Immigration and Refugee Board - Head office and regional offices in Vancouver, Toronto and Montréal. Interviews were held with the Deputy Chairman, Special Adviser, six Board Members and three Training Officers.
3. UNHCR staff in Ottawa, Vancouver, Montréal, Toronto.
4. Directors of Laval Detention Centre and Celebrity Inn.
5. Ontario Association of Children's Aid Societies
6. Peel Children's Aid Society, Ontario
7. Chief Advocate, Office of Child and Family Service Advocacy, Ontario
8. Ministry of Correctional Services, Ontario
9. Director of Youth Protection, Montréal
10. Centre Jeunesse de Montréal
11. Service d'Aide aux Réfugiés et Immigrants de Montréal Metropolitan
12. Ministère des Relations avec les Citoyens et de l'Immigration, Québec
13. Migrant Services Unit, Ministry of Children and Family Development, B.C.
14. Guardianship Social Worker, Ministry of Children and Family Development, B.C.
15. Care Services Manager, Children's Home, B.C.
16. Storefront Orientation Services, B.C.
17. Canadian Council for Refugees - President and Director
18. International Social Service Canada
19. Child Welfare League of Canada
20. Ottawa Carleton Immigrant Services Organization
21. Catholic Immigration Centre, Ottawa
22. Action Réfugiés Montréal
23. Larson Boulton Sohn Stockholder, Immigration Lawyers, Vancouver
24. Parkdale Legal Clinic, Toronto
25. Two Refugee Lawyers - Montréal and Toronto
26. Two Designated Representatives, Toronto