



Equally Human, Equally Entitled To Rights

Report to the UN Committee on Economic, Social and Cultural Rights on Canada's compliance
with the International Covenant on Economic, Social and Cultural Rights

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A. Introduction

The Canadian Council for Refugees (CCR) is a national non-profit umbrella organization committed to the rights and protection of refugees and other vulnerable migrants in Canada and around the world and to the settlement of refugees and immigrants in Canada. The CCR brings forward the concerns and experiences of its approximately 170 member organizations who work directly with refugees and other newcomers in communities across Canada.

The CCR welcomes the commitments made by the new federal government to give priority to refugees and family reunification. The inclusion of “refugees” in the name of the Minister’s portfolio and his department signals a new orientation that may lead to better respect for refugees’ economic, social and cultural rights. We note that the Minister’s mandate letter¹ specifically addresses a number of issues of concern, including the commitment to reduce immigration and citizenship application processing, and to increase the maximum age for dependents to 22 years in the definition of family member for immigration purposes.

The CCR highlights for the Committee that accessing economic, social and cultural rights in Canada is significantly harder for non-citizens. The CCR observes that many rule-based barriers prevent newcomers from prospering and as such, these barriers contribute to and maintain poverty.

Note that this submission highlights only a few of the many concerns the CCR has with respect to the rights of refugees and other vulnerable migrants. We endorse the submissions made by Canada without Poverty and the Income Security Advocacy Centre on access to social assistance for refugees.

B. Articles 1-5: Issues relating to general provisions of the Covenant

a) Immigration status as a form of discrimination

The CCR highlights for the Committee the key overarching issue of immigration status as a barrier to access to the economic, social and cultural rights. Canada too often ties rights and benefits protected under the *Covenant* to immigration status, thus excluding people with non-permanent or no status, in violation of Art 2(2). This theme repeats itself in nearly all issues we raise to the Committee in this submission.

b) No waiver from fee for a humanitarian grant of landing, or for citizenship

Brief Explanation of the Problem

Those who apply for permanent resident status in Canada on humanitarian and compassionate grounds cannot seek a waiver from the \$550 application fee. Canada’s *Immigration and Refugee Protection Act*, at s. 25(1), allows anyone within Canada to seek an exemption, on humanitarian and compassionate grounds, from any provision of the *Act*. An H&C applicant, Ms. Nell Toussaint, on behalf of herself and others, sought to challenge a refusal to consider her application when she could not come up with the fee. The Federal Court of Appeal considered her evidence of living in poverty and found that immigration officers are able, under the *Act*, to consider

¹ <http://pm.gc.ca/eng/minister-immigration-refugees-and-citizenship-mandate-letter>

meritorious requests for fee waivers. Meritorious applicants living in poverty would otherwise not be entitled to access economic, social or cultural rights in Canada. However, following this decision, the Federal government introduced a new provision into the *Act* which prohibited any consideration of an H&C application unless the fee had been paid.

Although there is no express provision in the *Citizenship Act* refusing to consider an application without payment of the requisite fee, there is no procedure for applicants to request a waiver from the fee. The \$630 adult fees for citizenship² is onerous. By contrast, in the United States applicants on social assistance can avail themselves of a clear process to request a fee waiver in a naturalization application.

Who is affected?

Persons without permanent status living in poverty seeking to regularize their status on humanitarian and compassionate grounds. Permanent residents living in poverty seeking to secure Canadian citizenship.

How is the ESC right violated?

Since secure immigration status is a gateway to all other rights, the inability for non-citizens with compelling humanitarian and compassionate factors, including the best interests of directly affected children, to even have the Canadian government *consider* their application violates Article 2(2) of the *Convention*.

What is the Legislative or Policy Basis for the Rights Violation?

s. 25(1.1) of the *Immigration and Refugee Protection Act*

What does Canada Need to do to be in Compliance?

Repeal s. 25(1.1) of the *Immigration and Refugee Protection Act*

Enact a process for requesting a fee waiver for citizenship for persons in receipt of social assistance.

C. Articles 6-9: Issues relating to work, unions and social security

1. Discriminatory Treatment of Migrant Workers

a) Closed work permits invite abuse

Brief explanation of the problem

Certain categories of migrant workers' work permits are tied to one employer: if they lose their job, they lose the right to be in Canada. Migrant workers can only work for the employer that brought them to Canada. Tied

² The fees are made up of \$530 for an "Adult Grant of Citizenship" and \$100 for the "Right of Citizenship". Two years ago the fee for the grant was just \$100; it was increased to \$300 in February 2014 and to \$530 in December 2014.

work permits make migrant workers vulnerable to abuse because their status in Canada depends on their employer. If migrant workers complain they can be fired by their employer, losing the right thereby to remain in Canada. Workers therefore often feel forced to endure abuse. Denying migrant workers the right to change jobs makes them more vulnerable to situations of human trafficking.³

Who is affected?

Generally low-skilled Temporary Foreign Workers (TFWs).

How is the ESC right violated?

Closed work permits for certain categories of temporary workers violate Article 6 of the *Covenant*: the provision to freely choose or accept work, and violates those persons' right to full and productive employment in conditions which safeguards their fundamental political and economic freedoms. Being tied to a particular employer increases the risk of abuse, and is a barrier to workers exercising their rights due to fear of losing immigration status in Canada if they leave the employment to which they are tied.

The high level of employer power over TFWs with tied work permits also violates Article 7 because it jeopardizes the right to safe and healthy working conditions due to the higher risk of abuse associated with tied work permits.

What is the legislative or policy basis for the rights violation?

Section 185(b)(ii and iv) of the *Immigration and Refugee Protection Regulations (IRPR)* sets out that an officer may impose specific conditions on the work migrant workers are permitted to engage in, including the employer and the times and periods of the work.

What does Canada need to do in order to be in compliance?

Amend the regulations so that migrant workers' permits cannot be tied to a single employer.

b) Two-tier: access to permanent status and the 4-years in, 4-years out rule

Brief explanation of the problem

In June 2014, the Canadian Government introduced changes to the TFW Program which re-organized it into two distinct programs: Temporary Foreign Worker Program (TFWP) and International Mobility Program (IMP). These changes created two tiers of workers with different levels of rights and enhanced vulnerabilities for those in the TFWP stream.

Participants in the TFWP are predominantly from “developing countries” while IMP participants are from “highly developed countries”, meaning that a large percentage of those in the more restrictive category are racialized persons. The classification of those in the IMP category as “high skill/high wage” is questionable,

³ <http://ccrweb.ca/sites/ccrweb.ca/files/migrantworkers4pager.pdf>

given that this category includes the Working Holiday program for youth from certain (mainly White) countries, and spouses/common-law partners of highly-skilled foreign workers and international students (who may or may not possess high skills). Under the new migrant worker scheme, the low-skill and high-skill categorization is, in fact, not linked to workers' skills.

Except for some workers in the Caregiver program, TFWs do not have an avenue to permanent residence.

The Cumulative Duration (four-year maximum) regulation came into effect April 1, 2011, and established a maximum duration that most Temporary Foreign Workers can work in Canada. After four years of work in Canada, they are ineligible to work in Canada again until after another period of four years has elapsed. IMP participants, on the other hand, already categorized as high-skilled workers, are more likely to be able to qualify as skilled immigrants for permanent residence.

Who is affected?

Migrant workers who come to Canada under the TFWP to fill positions that are classified as "low-skilled", meaning that the wage these workers receive is below the provincial median wage, regardless of the actual skill level that the positions they fill requires.

How is the ESC right violated?

The maximum four year time limit acts as a barrier to promotion in the worker's employment. This is a violation of Article 7(c) of the *Convention* which recognizes the equal rights of everyone to be promoted in their employment to a higher level, subject to no considerations other than seniority and competence.

What is the legislative or policy basis for the rights violation?

Section 200(3)(g) of the *Immigration and Refugee Protection Regulations (IRPR)* sets out the *four years in, four years out* rule.

Further, Canada has not signed the *International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICRMW)*. In accordance with other human rights conventions, contracting parties are obliged to warrant the human rights of working migrants listed in this Convention without discrimination.

What does Canada need to do to be in compliance?

Abandon the current two-tier, two-stream migratory worker regime and ensure equal treatment and equal rights for all temporary workers. Specifically, provide pathways to permanent residence for all workers.

Sign the ICRMW: Signing and ratifying the Convention would force Canada to review its migrant worker programs in order to make them more respectful of the Convention.⁴

⁴ <http://ccrweb.ca/en/canada-sign-migrant-workers-convention>

2. Work permits for certain groups of non-citizens limited to 6 months

Brief Explanation of the Problem

The Canadian government issues short-term work permits (of 6 months' duration) to certain groups of foreign nationals. This includes cases where people are clearly going to be in Canada for longer. Having to apply frequently for work permits is expensive (the cost is either \$155 or \$255 each time; some classes of applicants are fee-exempt), is administratively burdensome, and makes it harder to find work. Employers are reticent to take someone on and train them if their legal right to work will expire in a few months.

Further, refugee claimants from so-called "Designated Countries of Origin" may not even apply for a work permit until 180 days after a claim for refugee protection has been filed. This includes refugee claimants from countries with fairly high refugee recognition rates, such as Hungary and Mexico.

Work permits take approximately 3 months, from the time of applying, to be processed. Many individuals who apply to renew as advised well in advance of the expiry of their work permits still only receive their new work permit after expiry. Although legally such workers enjoy "implied status" with the right to work, employers often do not understand this and fire the workers.

Who is affected?

- Newly arrived refugee claimants;
- Refugee claimants from "Designated Countries of Origin";
- Refused refugee claimants awaiting appeal, a pre-removal risk assessment, or removal;
- Accepted refugees;
- Nationals of countries on which the Canadian government has imposed a suspension of removals due to generalized risk;
- Survivors of trafficking on a Temporary Resident Permit;
- Applicants awaiting humanitarian and compassionate decisions for permanent residence, including those who have received first-stage approval.

How is the ESC right violated?

The issuance of short-term work permits violates Article 6(1) of the *Convention*, which recognizes the right to work.

What is the Legislative or Policy Basis for the Rights Violation?

- CIC's Operational Bulletin **OB 484 – Processing Work Permits for DCO and Non-DCO refugee claimants**
- *Immigration and Refugee Protection Regulations*, s. 206(2): "Despite subsection (1), a work permit must not be issued to a claimant referred to in subsection 111.1(2) of the Act unless at least 180 days have elapsed since their claim was referred to the Refugee Protection Division.

What does Canada Need to do to be in Compliance?

Repeal s. 206(2) of the *Regulations*

Amend policy for issuing work permits to ensure applicants likely to be in Canada for longer are issued minimum 1-year work permits

D. Articles 10-12: Issues relating to families, standard of living, physical & mental health

1. Long delays and barriers to family reunification

a) Refugee family reunification takes years

Brief explanation of the problem

Canada's immigration processing for family reunification cases is extraordinarily slow. Many children wait **over two years** before being able to reunite with their parent in Canada. For family members of refugees, overseas processing can take **31 months or longer**.⁵

Who is affected?

Long processing times affect anyone seeking to sponsor a family member, but the delays are particularly long for Convention refugees seeking to reunite with their children and spouses, who have the most urgent need for safety.

How is the ESC right violated?

These systemic delays violate Article 10 of the ICESCR (protection of the family, mothers and children) and the egregious delay for refugees' family members violates Art. 2(2) (non-discrimination).

What is the legislative or policy basis for the rights violation?

There is no known legislative or policy basis for these delays.

What does Canada need to do to be in compliance?

Prioritize, in its allocation of resources, the reunification of children with their parents who are entitled to bring them to Canada. The Canadian government committed, in 2015, to processing economic class immigrants within 6 months through the "Express Entry" system, showing that cases can be processed quickly where there is political will.

⁵ <http://ccrweb.ca/en/family-reunification-action>

b) Refugee children cannot include their parents for concurrent processing

Brief explanation of the problem

Children who are recognized as Convention Refugees and granted “protected person” status in Canada have the right to apply for permanent residence for themselves but cannot include their parents or siblings in their application. Adult refugees, on the other hand, can include spouse and children. There is no other mechanism giving child refugees the right to be reunited with their immediate family in Canada.

Who is affected?

Unaccompanied refugee children in Canada.

How is the ESC right violated?

This discriminatory rule violates Article 10 of the ICESCR (protection of the family, mothers and children) and Art. 2(2) (non-discrimination). It also fails to consider the child’s best interest, or to respect their right to be reunited with their parents, in contravention of the *Convention on the Rights of the Child*.

What is the legislative or policy basis for the rights violation?

Section 176 of the *Immigration and Refugee Protection Regulations* permits the protected person to include their “family members” in their application for permanent residence. However under section 1(3) of the *Regulations* a “family member” is defined as the spouse, the child, or the child of the child, of the protected person – **but not the parent or siblings of a child who is a refugee.**

What does Canada need to do to be in compliance?

Section 1(3) of the *Immigration and Refugee Protection Regulations* should be amended to include the parents and siblings of a minor refugee as “family members” for the purpose of Regulation 176.

c) Live-in Caregivers forced to leave children behind and wait years to be reunited

Brief explanation of the problem

Canada’s Live-in Caregiver Program, through which persons (overwhelmingly women from the Philippines) can provide caregiving work to children, the elderly, or people with high medical needs does not allow family members to accompany the worker until they fulfill their required hours (24 months), apply for permanent residence, and then wait for approximately 45 months while their permanent residence application is processed and approved. Caregivers who left their own children behind face years and years of separation from them as a result of the way the program is structured.

Who is affected?

Caregivers in Canada, and their spouses and children.

How is the ESC right violated?

This policy violates Article 10 of the ICESCR (protection of the family, mothers and children) and Art. 2(2) (non-discrimination).

What is the legislative or policy basis for the rights violation?

The *Immigration and Refugee Protection Regulations*, at ss. 114 – 115, set out that family members of Live-in Caregivers may only become permanent residents after the Caregiver has been granted permanent residence.

What does Canada need to do to be in compliance?

The legislation should be amended so that caregivers' families may accompany them or join them in Canada at any point during their participation in the program.

d) People applying on humanitarian grounds cannot include their children overseas***Brief explanation of the problem***

In most applications for permanent residence in Canada, dependent children may accompany the applicant so long as they were under the cut-off age of dependency (and unmarried) at the time the application was filed (or “locked in”).

People accepted for permanent residence from within Canada on humanitarian and compassionate (H&C) grounds go through a two-step immigration process (stage 1 approval, and then stage 2 assessment of admissibility of themselves and any dependents, whether living in Canada or overseas). This leads to lengthy delays. In addition, some children “age out”, as the lock-in date in these cases is NOT the date of the original application by the parent, the date of the subsequent sponsorship application for the child under the Family Class. During the long processing times for the parent’s application, children often become older than the maximum age of dependency.⁶

Who is affected?

In-Canada meritorious applicants on humanitarian grounds, and their overseas children.

How is the ESC right violated?

This policy violates Article 10 of the ICESCR (protection of the family, mothers and children) and Art. 2(2) (non-discrimination).

⁶ <http://ccrweb.ca/sites/ccrweb.ca/files/frguide.pdf>

What is the legislative or policy basis for the rights violation?

The law is currently silent on this issue. In July 2004 the previous section 69 of the *Immigration and Refugee Protection Regulations* was repealed. It read:

A foreign national who is an accompanying family member of a foreign national to whom a permanent resident visa is issued under section 67 [H&C outside Canada] or becomes a permanent resident under section 68 [H&C inside Canada] shall be issued a permanent resident visa or become a permanent resident, as the case may be, if, following an examination, it is established that

- (a) The accompanying family member is not inadmissible

What does Canada need to do to be in compliance?

Re-enact the previous s. 69 of the *Regulations*.

e) Family members are arbitrarily excluded through Regulation 117(9)(d)

Brief explanation of the problem

According to section 117(9)(d) of the *Immigration and Refugee Protection Regulations*, a family member who was not examined when the sponsor immigrated to Canada is excluded from the Family Class and cannot be sponsored. The purpose of this provision is to ensure that immigrant applicants **disclose all of their family members** so that they can be **examined**. This is important because in some circumstances a potential new immigrant is inadmissible if any family member is inadmissible.

Since this regulation came into effect in 2002, there have been numerous instances of family members **including young children** being left out of the initial application for permanent residence and then permanently excluded from the Family Class, and thus kept separated from their family members in Canada. Although humanitarian applications have sometimes been successful in permitting the excluded family member to come to Canada, this has often been at a great cost of time and resources, and has sometimes caused irreparable harm to the families involved. In 2008 the CCR published a detailed submission on the harmful and unintended consequences of Regulation 117(9)(d), particularly affecting refugees : “*Families never to be United: Excluded family members.*”⁷

Who is affected?

This Regulation disproportionately affects refugees and their family members, who complete forms in conditions of misinformation and lack of legal advice. An *Access to Information Request* made by the CCR in 2015 found that in a 4-year period from 2010 to 2014, many more children than spouses were barred from reuniting with their parent in Canada due to this Regulation. A survey of the caselaw, where sponsors have challenged the refusal of a humanitarian exemption from this rule, has shown that in the vast majority of cases

⁷ <http://ccrweb.ca/files/famexcluprofilsen.pdf>

(over 90%) involving a non-disclosed family member, there was no fraud intended. The purpose of this Regulation – to deter fraud – is not borne out on the ground.

How is the ESC right violated?

This Rule violates Article 10 of the ICESCR (protection of the family, mothers and children) and its disproportionate impact on refugees and their family members violates Art. 2(2) (non-discrimination).

What is the legislative or policy basis for the rights violation?

Section 117(9)(d) of the *Immigration and Refugee Protection Regulations*

What does Canada need to do to be in compliance?

The CCR recommends that Regulation 117(9)(d) be repealed in its entirety. Issues of non-disclosure of family members can be dealt with appropriately under the misrepresentation provisions of the *Act* and *Regulations*.

f) Costly DNA testing disproportionately imposed on refugees living in poverty

Brief explanation of the problem

Demands for DNA testing cause significant hardships for some families, especially those who cannot afford the test or who have already been waiting years to be reunited. Most troubling of all is the impact on children, kept separated from their parents. In 2011 CCR produced a report about this ongoing issue: “*DNA Tests: A Barrier to Speedy Family Reunification*”.⁸

Who is affected?

Parents, often refugees, living in poverty, and their children. DNA tests are predominantly demanded from nationals of certain countries, predominantly in Africa.

How is the ESC right violated?

This Rule violates Article 10 of the ICESCR (protection of the family, mothers and children) and its disproportionate impact on people of colour violates Art. 2(2) (non-discrimination).

What is the legislative or policy basis for the rights violation?

Section 2 of the *Immigration and Refugee Protection Regulations* defines a “dependent child” as either the adopted or biological child of the parent.

⁸ <http://ccrweb.ca/sites/ccrweb.ca/files/dnatests.pdf>

Departmental guidelines specify that DNA “is a last resort” and that it is an option for an applicant “who cannot provide satisfactory documentary evidence of a relationship.” (CIC Operational Manuals OP 1, 5.10 and OP 2, 5.15)

What does Canada need to do to be in compliance?

The Immigration and Refugee Protection Regulations should be amended to broaden the definition of child beyond adopted and biological children.

The Canadian government should review current practices relating to DNA testing and their impacts on affected families, and adopt clear guidelines designed to ensure that DNA testing is truly only used as a last resort.

2. Child tax benefits, and loan burdens contribute to and maintain poverty

a) Non-permanent resident parents are denied access to the Canada Child Tax Benefit and provincial/territorial programs that are meant to target child poverty

Brief Explanation of the Problem

The Canada Child Tax Benefit is denied to some children on the basis of their parent’s immigration status. On the basis of the status of the parents, children and their families are denied the benefit of significant income supplements which would raise their standard of living above abject poverty.

The Child Tax Benefit is designed to assist low-income families and individuals, and by their very nature they would make a substantial difference to the standard of living of the families who are denied. Many of the families denied the benefits are legally present in Canada, hold work permits, pay taxes, file income tax returns. Many of the children affected are Canadian citizens – eligibility is determined by the status of the parent, not that of the child.

Who is Affected?

Low-income children whose parents are:

- Refugee claimants;
- Refused refugee claimants awaiting appeal, or a pre-removal risk assessment, or awaiting removal;
- Nationals of countries on which the Canadian government has imposed a suspension of removals due to generalized risk;
- Applicants awaiting humanitarian and compassionate decisions for permanent residence;
- Temporary Foreign Workers.

How is the ESC right violated?

Article 9(2) of the *Convention* provides for adequate social assistance for new mothers, which is violated by this rule. Article 11 provides that everyone has a right to an adequate standard of living for herself and her family, which is violated by this rule. Article 2(2) provides that the rights in the *Covenant* are not to be discriminatorily applied and yet this is clear discrimination on the basis of parental immigration status.

Other ESC rights violated by this policy include: the right to be free from hunger under article 11(2); special protection for children without discrimination and regardless of parentage and other conditions under article 10(2), and the right to the highest standard of physical and mental health under article 12 are all engaged.

What is the Legislative or Policy Basis for the Rights Violation?

The Income Tax Act s. 122.6(e)

What Does Canada Need to do to be in Compliance?

Amend *Income Tax Act* section 122.6 to remove the requirement for permanent residence status for the applicant parent, and in particular allow access to Child Tax Benefits to the residing parents of all Canadian citizen children.

b) Refugees resettled to Canada are issued loans to cover their medical examination and transportation costs, repayable with interest

Brief explanation of the problem

Refugees resettled to Canada must pay for their medical exam and their travel to Canada. Since most refugees cannot afford these expenses, Canada offers them a loan. As a result, most refugee families start their new life in Canada with a debt of up to \$10,000. They must repay this loan with interest.

Who is affected?

Refugees offered protection in Canada based on their vulnerability.

How is the ESC right violated?

These loans undermine refugees' ability to integrate and to contribute to their full potential in their new home. Refugee youth are forced to work long hours while going to school, or even postpone further education, because of the need to pay back the debt.

What is the legislative or policy basis for the rights violation?

Section 88 of the *Immigration and Refugee Protection Act* and Sections 288 – 293 of the *Immigration and Refugee Protection Regulations*, which provide for loans to – among others – refugees.

What does Canada need to do to be in compliance?

The government of Canada should absorb the costs of transportation and overseas medical expenses for all refugees, and amend the regulations accordingly.

E. Articles 13–15: Issues relating to education, cultural life and science

1. Discriminatory access to education

a) Denial of free schooling for children living in Canada based on status

Brief explanation of the problem

The *Immigration and Refugee Protection Act* has provisions governing applications by non-Canadians to work or study in Canada. Section 30(2) of the *IRPA* provides that:

Every minor child in Canada, other than a child of a temporary resident not authorized to work or study, is authorized to study at the pre-school, primary or secondary level.

However, primary and secondary education is a matter of provincial and territorial jurisdiction in Canada and each of the ten provinces and three territories have their own education legislation which requires all school-age children to attend school and ensures that they have access to publicly funded schools free of charge.

A problem arises because primary and secondary schools in Canada also have programs for visa students from abroad who pay significant fees in order to attend these public primary or secondary schools. Partly as a result of the visa student situation, most school authorities inquire as to a prospective student's immigration status when a child applies for admission to a publicly funded primary or secondary school.

If a child or a child's parents or guardians do not have permanent status in Canada, they are sometimes referred to authorities of the local school board who deal with the visa student program and are asked to pay visa student fees in order to attend school in the province. Sometimes children are refused access to school until evidence of permanent status is shown.

The Province of Quebec has recently issued policy guidelines encouraging the exercise of positive discretion to allow children with precarious immigration status to attend school, and has indicated an intention of amending the education legislation in the province to ensure that all children can attend school free of charge.⁹ In Ontario, although the province's *Education Act* at s. 49.1 provides that non-status minors must be admitted to school, that information does not always trickle down to individual school boards or schools. Elsewhere across Canada, provincial education legislation concerning this issue is inconsistent or nonexistent.

b) Higher education financially inaccessible for young people with precarious status

Brief explanation of the problem

Children and youth who do not have permanent status in Canada and who have completed secondary schooling have few opportunities to pursue higher education. Even if universities and colleges recognize their

⁹ "Quebec plans to allow undocumented children to get free schooling" Katherine Wilton, August 25, 2015 *Montreal Gazette*

qualifications to attend higher education, they apply admission rules for foreign students to these young people. These rates are many times higher than the regular rates.

Moreover, these young people are unable to access the government student loan programs to pay for their further education. Thus many talented and capable young people are denied the opportunity of pursuing higher education despite their capacity to do so. In addition to the lost potential for these youth, the closing of doors to future education at this most sensitive time of their development can cause severe depression and anxiety.

Who is affected by both of these problems?

Although there are no definitive statistics on the number of persons living with no or precarious immigration status in Canada, the population is growing. Some estimate it is in the range of 200,000. A significant portion of this number would be children of school age. Even in the province of Ontario where there has been an active campaign since the 1990s to ensure access to schools, and even though there is clear legislation and policy in that province, many schools and school boards seem to be unaware of the legislation and policies.

Furthermore, although infrequent, there are incidents of children being “arrested” in school in front of their school mates by Canada Border Services Agency (CBSA) officers and taken into detention until their parents turn themselves in to submit to deportation proceedings. These incidents, which receive wide coverage in the press, has a serious chilling effect on children exercising their human right to attend primary and secondary school regardless of immigration status.

How is the ESC right violated?

Under Article 13 of the *Covenant of Economic Social and Cultural Rights*, all persons have the right to education and “primary education shall be compulsory and free to all; secondary education... shall be made generally available and accessible to all by every appropriate means, and in particular by the progressive introduction of free education; higher education shall be made equally accessible to all, on the basis of capacity, by every appropriate means, and in particular by the progressive introduction of free education.” As described above, this right is regularly violated across Canada.

What is the legislative or policy basis for the rights violation?

Failure of the Federal Government to develop clear policies and communicate these to the provinces with regard to access to education regardless of immigration status.

Failure of the provinces to enact clear legislation to ensure that all children have access to public primary and secondary education free of charge, and to develop policies to ensure that these provisions are understood and fulfilled by the responsible school authorities.

Failure of the Federal and Provincial governments to ensure that colleges and universities under their jurisdiction have policies in place to ensure that youth who are *de facto* residents of Canada but who do not have permanent immigration status, are permitted and enabled to attend higher education facilities in accordance with their financial capacity.

What does Canada need to do to be in compliance?

Enact legislation and policies in all provinces and territories to ensure that all children, regardless of their immigration status, have access to primary and secondary education free of charge and without fear of deportation actions

Guidance by the federal, provincial and territorial governments so that colleges and universities under their jurisdiction develop legislation and policies to ensure that youth who are *de facto* residents of Canada but who do not have permanent immigration status, are permitted and enabled to attend higher education facilities in accordance with their financial capacity.