

Children: The Silenced Citizens

EFFECTIVE IMPLEMENTATION OF CANADA'S INTERNATIONAL OBLIGATIONS WITH RESPECT TO THE RIGHTS OF CHILDREN

Final Report of the Standing Senate Committee on Human Rights

The Honourable Raynell Andreychuk
Chair

The Honourable Joan Fraser
Deputy Chair

April 2007

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rights-droits@sen.parl.gc.ca

Membership

The Honourable Raynell Andreychuk, Chair

The Honourable Joan Fraser, Deputy Chair

and

The Honourable Senators:

Romeo Dallaire

*Céline Hervieux-Payette, P.C. (or Claudette Tardif)

Mobina S.B. Jaffer

Noël A. Kinsella

*Marjory LeBreton, P.C. (or Gerald Comeau)

Sandra M. Lovelace Nicholas

Jim Munson

Nancy Ruth

Vivienne Poy

*Ex-officio members

In addition, the Honourable Senators Jack Austin, George Baker, P.C., Sharon Carstairs, P.C., Maria Chaput, Ione Christensen, Ethel M. Cochrane, Marisa Ferretti Barth, Elizabeth Hubley, Laurier LaPierre, Rose-Marie Losier-Cool, Terry Mercer, Pana Merchant, Grant Mitchell, Donald H. Oliver, Landon Pearson, Lucie Pépin, Robert W. Peterson, Marie-P. Poulin (Charette), William Rompkey, P.C., Terrance R. Stratton and Rod A. Zimmer were members of the Committee at various times during this study or participated in its work.

Staff from the Parliamentary Information and Research Service of the Library of Parliament:

Laura Barnett, Analyst

Staff from the Senate Committees Directorate:

Louise Archambeault, Administrative Assistant

Mathieu Boulianne, Administrative Assistant

Line Gravel, Clerk of the Committee

Josée Thérien, Clerk of the Committee

Vanessa Moss-Norbury

Clerk of the Committee

Order of Reference

Extract from the *Journals of the Senate*, Thursday, April 27, 2006:

The Honourable Senator Andreychuk moved, seconded by the Honourable Senator Keon:

That the Standing Senate Committee on Human Rights be authorized to examine and report upon Canada's international obligations in regards to the rights and freedoms of children.

In particular, the Committee shall be authorized to examine:

- Our obligations under the United Nations Convention on the Rights of the Child; and
- Whether Canada's legislation as it applies to children meets our obligations under this Convention.

That the papers and evidence received and taken on the subject during the Thirty-eighth Parliament be referred to the Committee; and

That the Committee present its final report to the Senate no later than December 31, 2006 and that the Committee retain until March 31, 2007 all powers necessary to publicize its findings.

The question being put on the motion, it was adopted.

Extract from the *Journals of the Senate*, Wednesday, November 29, 2006:

The Honourable Senator Andreychuk moved, seconded by the Honourable Senator Meighen:

That, notwithstanding the Order of the Senate adopted on Thursday, April 27, 2006, the Standing Senate Committee on Human Rights which was authorized to examine and report upon Canada's international obligations in regards to the rights and freedoms of children, be empowered to extend the date of presenting its final report from December

31, 2006 to March 31, 2007 and that the Committee retain until June 30, 2007 all powers necessary to publicize its findings.

The question being put on the motion, it was adopted.

Extract from the *Journals of the Senate*, Thursday, March 29, 2007:

The Honourable Senator Fraser moved, seconded by the Honourable Senator Milne:

That, notwithstanding the Order of the Senate adopted on Wednesday, November 29, 2006, the Standing Senate Committee on Human Rights which was authorized to examine and report upon Canada's international obligations in regards to the rights and freedoms of children, be empowered to extend the date of presenting its final report from March 31, 2007 to April 30, 2007 and that the Committee retain until July 30, 2007 all powers necessary to publicize its findings.

The question being put on the motion, it was adopted.

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Chair's Forward

In November 2004, the Senate Human Rights Committee embarked on a study of Canada's international obligations in relation to the rights and freedoms of children, filing an Interim Report, entitled *Who's in Charge Here? Effective Implementation of Canada's International Obligations with Respect to the Rights of Children*, a year later. The Interim Report indicated that the *Convention on the Rights of the Child* has not been incorporated into domestic law and that there were gaps in its implementation. The Interim Report also noted witnesses concerns about the lack of public awareness about the Convention and children's rights in Canada.

Ultimately, the Committee used Canada's implementation of the Convention as a lens through which to analyze this country's broader approach to ratification and implementation of international human rights treaties, expanding upon the work that the Committee began with its first study, *Promises to Keep: Implementing Canada's Human Rights Obligations*. In the end, our intensive study of children's rights and the *Convention on the Rights of the Child* only confirmed the Committee's earlier conclusions that Canada must begin to take its international human rights treaty obligations more seriously. When the Canadian government ratifies a treaty it must keep its promises and work diligently towards effective implementation of that treaty at home. This is not happening now.

Canada signed the *Convention on the Rights of the Child* on 28 May 1990 and ratified it on 13 December 1991. Yet, the Committee's study clearly demonstrated that consecutive federal governments have not kept the promises that were made upon ratification. At the ground level, children's rights are being pushed to the side and even violated in a variety of situations – one only needs to take a brief survey of the issue of child poverty, or the situation of Aboriginal or special needs children to realize that this is true. The Convention has been effectively marginalized when it comes to its direct impact on children's lives. The Committee is deeply concerned about this situation, and through this study, emphasizes the importance of living up to our obligations under international human rights treaties. Serious initiatives to implement the Convention by the federal government, and by other levels of government across Canada, could have a profound impact on real children's lives. In this report, the Committee calls on all levels

of government in Canada to comply with our legal obligations respecting children by improving institutions, public policy, and laws that affect them.

As this study on children's rights draws to a close, I would like to thank the members of this Committee for their enthusiasm and dedication. Each Senator drew from their own area of expertise and life experience, and were touched by this study in a variety of ways. Through this report they have emphasized their wholehearted commitment to the full respect and effective implementation of children's rights in Canada.

Finally, I would like to thank the staff from both the Senate and the Library of Parliament who were involved in this study. In this regard, I would like to give special recognition and appreciation to Vanessa Moss-Norbury, Josée Thérien and Dr. Line Gravel, the Clerks of the Committee, and Laura Barnett, the Committee's Researcher. I would also like to thank the numerous witnesses who appeared before this Committee, both in Canada and elsewhere, for providing us with their valuable perspectives on the *Convention on the Rights of the Child*, the state of children's rights in Canada, and the most effective means for implementing international law in the domestic context.

Like the Interim Report before it, this Report is dedicated to Canada's children, in the expectation that, if its recommendations are implemented, it can provide children with the means to have their voices heard as citizens in our society.

Executive Summary

This Study (Chapter 1)

In November 2004, the Standing Senate Committee on Human Rights was authorized by the Senate to examine and report upon Canada's international obligations with regard to the rights and freedoms of children. From the outset, the Committee reviewed Canada's international obligations with respect to children's rights as a case study reflecting the broader implications of ensuring that domestic legislation and policies comply with Canada's international human rights obligations, and in keeping with a broader mandate that began with this Committee's first report in 2001, *Promises to Keep: Implementing Canada's Human Rights Obligations*. The primary aim of this study was to assess whether the United Nations *Convention on the Rights of the Child* has been implemented, whether Canadian children are benefiting from it, and whether the Convention has been used as a tool to address key problems of facing children in this country.

The Committee also looked at the role of Parliament within this framework.

Canadian Implementation of International Law (Chapter 2)

In November 2005, the Committee tabled its Interim Report, *Who's in Charge Here? Effective Implementation of Canada's International Obligations with Respect to the Rights of Children*, in the Senate. That report built on *Promises to Keep*, discussing the application of the international obligations in domestic law.

In Canada, international human rights treaties are rarely incorporated directly into Canadian law, but are indirectly implemented by ensuring that pre-existing legislation is in conformity with the obligations accepted in a particular convention. Parliament plays no role in ratification, thus international human rights treaties that are not directly incorporated into domestic legislation bypass the parliamentary process. Implementation of international law where provincial laws and policies are affected is the responsibility of the federal, provincial and territorial governments. The federal government has

adopted a policy of consulting with provinces and territories before signing and ratifying treaties on matters within their jurisdiction in order to deal with these complexities.

With respect to Canada's reporting obligations under human rights treaties, the Continuing Committee of Officials on Human Rights facilitates preparation of Canada's country reports to the United Nations human rights treaty bodies. When the treaty body issues its Concluding Observations, the Continuing Committee's role is to keep provincial and territorial governments apprised of any comments on the scope of the rights guaranteed by the convention.

One of the key concerns expressed by witnesses is the federal government's unwillingness to directly incorporate international human rights treaties. However, the government has an obligation to make best efforts to comply with international treaties domestically through domestic implementation, no matter what jurisdictional hurdles are entrenched in the Constitution. In addition, the Committee heard that the Continuing Committee is not an efficient mechanism for ensuring coordination among jurisdictions or with the various treaty bodies, because of its limited mandate. Current reporting and dissemination processes are too complex, and concerns have been expressed about the lack of transparency and lack of real public or parliamentary input in the reporting and follow-up process, as well as the lack of public dissemination of the treaty bodies' Concluding Observations.

Children's Rights and the Canadian Context (Chapters 3 to 17)

Chapter 3 provides an overview of the *Convention on the Rights of the Child* – the principles enshrined in it, the Optional Protocols, and the role of the UN Committee on the Rights of the Child. Canada signed the Convention on 28 May 1990 and ratified it on 13 December 1991. This chapter focuses on the value of a rights-based approach, which emphasizes **that all rights are equal and universal; that all people, including children, are the subject of their own rights and should be participants in development, rather than objects of charity; and that an obligation is placed on states to work towards ensuring that all rights are being met.** The rights-based approach is of particular importance in the discussion of children's rights because of

children's often intense vulnerability, the frequent competition between children's rights and those of adults, and the resulting ease with which a more paternalistic and needs-based approach can be adopted. Children's voices rarely inform government decisions, yet they are one of the groups most affected by government action or inaction. Children are not merely underrepresented; they are almost not represented at all. The *Convention on the Rights of the Child* properly puts children at the centre, in the context of their family, their community, and their culture. Nevertheless, there is a real gap between rights rhetoric and the reality of children's lives in Canada – many people in Canada and elsewhere continue to resist full implementation of the Convention.

Chapter 4 discusses implementation of the Convention in Canada, including the lack of enabling legislation, the weight given to judicial interpretation, Canada's reservations to the Convention and the impact of Canada's federal nature on implementation. The Committee finds that the federal government's approach to compliance with children's rights, and with the Convention in particular, is inadequate. Jurisdictional complexities, the absence of effective institutions, an uncertain approach to human rights law, and lack of transparency and political involvement indicate that the Convention is being ineffectively applied in the Canadian context. What is needed to push both the issue and respect for the democratic process further is enhanced accountability, increased parliamentary and public input, and a more open approach to compliance that promotes transparency and enhanced political will.

Chapters 5 to 16 discuss Canadian compliance with specific articles of the *Convention on the Rights of the Child*. These chapters highlight the Committee's observations and recommendations with respect to implementation and use of the Convention in terms of issues of participation and expression, violence against children, exploitation of children, youth criminal justice, child welfare, adoption and identity issues, migrant children, early childhood development and care, child poverty, health issues, sexual minority children, and Aboriginal children. The Committee's intention was not to study these critical issues exhaustively for answers, but to investigate whether these issues and concerns are dealt with using the *Convention on the Rights of the Child*. The Committee's observations are accompanied by suggestions and recommendations as

to how the federal, provincial, and territorial governments can all move forward to ensure the protection of children's rights in Canada.

In Chapter 17 the Committee concludes that the *Convention on the Rights of the Child* is not solidly embedded in Canadian law, in policy, or in the national psyche. Canadians are too often unaware of the rights enshrined in the Convention, while governments and courts use it only as a strongly worded guiding principle with which they attempt to ensure that laws conform, rather than acting as if they are bound by it. Also, no body is in charge of ensuring that the Convention is effectively implemented in Canada, and the political will is lacking. Implementation is key to making the Convention work, and for Canada to claim that it fully respects the rights and freedoms of its children, it should improve its level of actual compliance. The federal government needs to take the lead with respect to implementation of the Convention.

The Committee concludes that the federal government does not have effective mechanisms in place to ensure compliance with its international human rights treaty obligations. As a result, the Committee proposes measures to guarantee systematic monitoring of the Convention's implementation in order to ensure effective compliance. These include proposals for the establishment of a federal interdepartmental implementation working group to coordinate and monitor federal legislation and policy affecting children's rights, and an independent children's commissioner to monitor government implementation of children's rights at the federal level and liaise with provincial child advocates. The Committee also emphasizes the need for awareness-raising with respect to both the Convention and the rights-based approach embedded within it. Most importantly, through its recommendations the Committee seeks to strengthen the active involvement of children in all institutions and processes affecting their rights.

Proposed Framework for Implementing International Law in Canada (Chapter 18)

Finally, in Chapter 18, the Committee emphasizes that Canada possesses no modern, transparent, and democratic international human rights treaty implementation process. Further, no institution has ultimate responsibility for ensuring that international human

rights conventions are effectively implemented. In response to this situation, the Committee outlines a framework for improving the process whereby Canada signs, ratifies and incorporates its international human rights obligations. This proposal calls for enhanced levels of accountability that will help to translate Canada's international human rights obligations into meaningful law, policy, and practice. In particular, the proposal emphasizes the need for Canada's ministers responsible for human rights to take ownership for Canada's international human rights obligations, and meet immediately, with renewed vigour, to ensure effective consultations and implementation of Canada's international human rights obligations. It is the hope of the Committee that some of the entrenched problems facing children today can be ameliorated by embracing the United Nations *Convention on the Rights of the Child* as a binding commitment for our children's benefit.

Summary of Recommendations

RECOMMENDATION 1 – *Participation and Expression (page 60)*

Pursuant to articles 12 to 15 of the *Convention on the Rights of the Child*, the Committee recommends that the federal government dedicate resources towards ensuring that children’s input is given considerable weight when laws, policies and other decisions that have a significant impact on children’s lives are discussed or implemented at the federal level.

RECOMMENDATION 2 – *Corporal Punishment (page 70)*

Pursuant to articles 19 and 28 of the *Convention on the Rights of the Child*, the Committee recommends that the federal government take steps towards the elimination of corporal punishment in Canada. Such steps should include:

- The immediate launch of an extensive public and parental education campaign with respect to the negative effects of corporal punishment and the need to foster enhanced parent-child communication based on alternative forms of discipline;
- Calling on the Department of Health to undertake research into alternative methods of discipline, as well as the effects of corporal punishment on children;
- Repeal of section 43 of the *Criminal Code* by April 2009; and
- Calling on the Department of Justice to undertake an analysis of whether existing common law defences – such as necessity and the *de minimis* defence – should be made expressly available to persons charged with assault against a child.

RECOMMENDATION 3 – *Bullying (page 74)*

Pursuant to article 19 of the *Convention on the Rights of the Child*, the Committee recommends that the federal government implement a national strategy to combat bullying in Canada, accompanied by a national education campaign in cooperation with provincial and territorial governments to teach children, parents, teachers, and others about bullying, and to promote conflict resolution and effective intervention strategies.

RECOMMENDATION 4 – *Children Involved in Armed Conflict*

(page 77)

Pursuant to article 38 of the *Convention on the Rights of the Child* and the *Optional Protocol on the Involvement of Children in Armed Conflicts*, the Committee recommends that the Canadian Forces:

- **Develop a database to track statistics with respect to the recruitment and involvement of those under the age of 18 in the Canadian Forces;**
- **Make its recruitment policies with respect to those under 18 years of age openly available to the public;**
- **Review and assess recruitment practices to ensure full compliance with the Convention, including ensuring that priority in the recruitment process is given to those who are 18 years of age or older; and**
- **Report back to this Committee in July 2009 in order to review recruitment policies and compliance with the Convention.**

RECOMMENDATION 5 – *UN Study on Violence* (page 77)

The Committee recommends that the federal government respond to the UN Study on Violence Against Children, and that it inform the international community, Parliament, and the Canadian public how it is responding to issues of violence against children and how it intends to improve upon policies to bring Canada into compliance with the *Convention on the Rights of the Child*.

RECOMMENDATION 6 – *Commercial Sexual Exploitation* (page 82)

Pursuant to articles 34 to 36 of the *Convention on the Rights of the Child* and the *Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography*, the Committee recommends that the federal government develop and implement a strategy to combat the commercial sexual exploitation of children that will address:

- **The predators who create the demand for the commercial sexual exploitation of children;**
- **Businesses and networks based on the commercial sexual exploitation of children;**
- **New technologies and their impact on child pornography and the commercial sexual exploitation of children; and**
- **Problem areas in terms of the involvement of children in the fashion industry, in marketing, in the media, and in the travel and tourism industry.**

RECOMMENDATION 7 – *Child Labour (page 85)*

Pursuant to articles 32 and 36 of the *Convention on the Rights of the Child*, the Committee recommends that the federal, provincial and territorial governments, as well as parents, ensure that safe conditions exist for children who do work, and that such children are informed of their rights and encouraged to remain in school.

RECOMMENDATION 8 – *Children in Conflict with the Law (page 97)*

Pursuant to articles 37 and 40 of the *Convention on the Rights of the Child*, the Committee recommends that the federal government:

- Withdraw its reservation to article 37 of the Convention and take concrete measures to work with the provinces and territories to ensure that youth are no longer detained with adults, and males no longer detained with female young offenders;
- Undertake to work proactively with the provinces and territories to assess whether the *Youth Criminal Justice Act* is working and to ensure that alternative measures are effectively implemented for youth in conflict with the law; and
- Work with the provinces and territories to provide training for child welfare authorities and health professionals in order to help them identify problems early in order to implement preventative intervention strategies for children at risk of coming into conflict with the law.

RECOMMENDATION 9 – *Child Protection (page 105)*

Pursuant to articles 9, 12, 19, 20, and 25 of the *Convention on the Rights of the Child*, the Committee recommends that the federal government organize federal-provincial-territorial consultations with respect to child protection issues and children in the care of the state. These consultations should focus on whether the Convention has been implemented in the following areas:

- The need to involve youth more fully in the child protection process;
- Working towards a uniformly legislated age of 18 for cut-off from protection; and
- The need for continuing support for youth exiting the child protection system.

RECOMMENDATION 10 – *Adoption (page 109)*

Pursuant to articles 5, 18, 20 and 21 of the *Convention on the Rights of the Child*, the Committee calls on governments across Canada to recognize and address the adoption crisis in this country, particularly in the case of Aboriginal children. The Committee recommends that the federal government organize consultations with its provincial and territorial counterparts with a view to:

- Increasing federal funding to promote the placement of children in permanent homes and to provide support services aimed at keeping children within their families;
- Streamlining the adoption process; and
- Reviewing Canada’s adherence to the *Hague Convention on the Protection of Children and Cooperation in Respect of Intercountry Adoption*.

RECOMMENDATION 11 – *Identity (page 115)*

Pursuant to articles 7 and 8 of the *Convention on the Right of the Child*, the Committee recommends that the federal-provincial-territorial negotiations on adoption proposed in Recommendation 10 should include consideration of access to a biological parent’s identity and of the benefits of identity disclosure vetos. The Committee also recommends that Assisted Human Reproduction Canada review the legal and regulatory regime surrounding sperm donor identity and access to a donor’s medical history to determine how the best interests of the child can better be served.

RECOMMENDATION 12 – *Migrant Children (page 138)*

Pursuant to articles 7, 9, 10, 11, 21, 22, and 35 of the *Convention on the Rights of the Child* and the *Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography*, the Committee recommends that:

- The Senate committee examining Bill C-14 take the concerns voiced in this report into serious consideration and that if the Bill is passed, the federal government implement a pilot project to determine whether immigration officials can rely on the provincial adoption approval process to assess whether the best interests of the child are being served;
- The Department of Citizenship and Immigration devote more resources to rectify backlogs delaying family reunification, particularly in its overseas visa offices, and strongly consider changes to immigration guidelines to allow

- children to be processed inland like spouses, as well as allowing separated children to include their parents on applications for permanent residence;
- Specific measures be put in place to ensure effective identification and protection of potentially separated children at the border;
 - Priority always be given to the best interests of the child when dealing with the detention of migrant children;
 - Migrant children are returned to their country of origin only after a final determination of whether or not compelling humanitarian and compassionate grounds exist to allow the child to remain in Canada, and a comprehensive pre-removal risk assessment with significant emphasis on the best interests of the child has been undertaken; and
 - All immigration and border services officials dealing with children in any way receive orientation and ongoing training to ensure that they are fully aware of children's rights, as well as how to communicate effectively with children of different cultural backgrounds.

RECOMMENDATION 13 – *Early Childhood Development (page 145)*

Pursuant to articles 18, 28, and 29 of the *Convention on the Rights of the Child*, the Committee recommends that the federal government meet with provincial and territorial governments to help coordinate the establishment of measurable standards and guidelines for delivering early childhood development and child care to children across the country, matched by adequate funding. Consultations should begin immediately, with proposed solutions to be presented to the Canadian public by July 2009.

RECOMMENDATION 14 – *Child Poverty (page 153)*

Pursuant to articles 26 and 27 of the *Convention on the Rights of the Child*, the Committee recommends that the federal government develop a federal strategy to combat child poverty that should be put into effect as soon as possible, accompanied by clear goals and timetables. Among other things, such a plan should include preventative measures aimed at high-risk families and a comprehensive housing strategy.

RECOMMENDATION 15 – *Children’s Health (page 164)*

Pursuant to articles 2, 23, 24, 33, and 39 of the *Convention on the Rights of the Child*, the Committee recommends that the federal, provincial, and territorial governments implement an improved process to improve services to special needs children by July 2008. Working to resolve this crisis on an immediate and on-going basis, governments should develop a consultation process to with advocacy groups, service providers, health professionals and special needs children. Early intervention should be a key focus of these consultations.

RECOMMENDATION 16 – *Sexual Minority Youth – Statistics (page 168)*

Pursuant to article 2 of the *Convention on the Rights of the Child*, the Committee recommends that the federal government act to fill the significant gaps in knowledge and statistics with respect to sexual minority youth and gender differences therein.

RECOMMENDATION 17 – *Sexual Minority Youth (page 168)*

Pursuant to article 2 of the *Convention on the Rights of the Child*, the Committee recommends that all policies and strategies implemented by the federal government with respect to youth take into account the specific needs of sexual minority youth.

RECOMMENDATION 18 – *Aboriginal Children (page 191)*

Pursuant to articles 2 and 30 of the *Convention on the Rights of the Child*, the Committee recommends that:

- Section 67 of the *Canadian Human Rights Act* be repealed;
- The federal government target funding as a priority for “least disruptive measures” with respect to child welfare, accompanied by an increased emphasis on prevention and early intervention;
- The federal government make housing a top priority and develop enhanced initiatives to promote economic development on-reserve;
- The federal government provide more funding to ensure that support services continue for Aboriginal children living off-reserve;
- The federal government review the services that it provides to Aboriginal communities to ensure that the approach and content are effectively tailored to meet the specific needs of Aboriginal children, youth, and families; this

- includes working directly with Aboriginal communities in the development of programs and services designed to meet their needs;
- The federal government expand the ability of health services to provide in-home supports, and to get involved early and work with children in their homes;
 - The Department of Indian Affairs and Northern Development provide our Committee with an update on the results of the youth engagement strategy on suicide, as well as the status of the National Aboriginal Youth Suicide Prevention Strategy – this Strategy should be implemented as swiftly as possible;
 - The federal government accelerate work with provincial and territorial ministers of education to discuss ways in which Aboriginal people can be encouraged to become teachers and to work on reserves;
 - While recognizing the need for Aboriginal teachers on-reserve, the federal government work with provincial and territorial ministers of education to remove barriers to facilitate the employment of Aboriginal teachers off-reserve if they so desire;
 - The federal, provincial, and territorial governments work with Aboriginal leadership to carefully examine policies that have an impact on Aboriginal children’s lives through the framework of the *Convention on the Rights of the Child*; and
 - All federal policies and legislation with respect to Aboriginal children place particular emphasis on the need to take the cultural needs of Aboriginal children into account.

RECOMMENDATION 19 – *Compliance with the Convention (page 195)*

As the federal government has signed and ratified the *Convention on the Rights of the Child*, the Committee recommends that the federal government immediately implement and comply with its obligations under that Convention.

RECOMMENDATION 20 – *Children’s Commissioner (page 214)*

The Committee recommends that Parliament enact legislation to establish an independent Children’s Commissioner to monitor implementation of the *Convention on the Rights of the Child*, and protection of children’s rights in Canada. The Children’s Commissioner should report annually to Parliament.

RECOMMENDATION 21 – *Interdepartmental Implementation Working Group (page 222)*

The Committee recommends that an interdepartmental implementation working group for children’s rights be established in order to coordinate activities, policies, and laws for children’s rights issues.

RECOMMENDATION 22 – *Continuing Committee of Officials on Human Rights (page 229)*

The Committee recommends that responsibility for the Continuing Committee of Officials on Human Rights be transferred immediately from the Department of Canadian Heritage to the Department of Justice.

RECOMMENDATION 23 – *Ministerial Responsibility (page 239)*

The Committee recommends that the federal, provincial and territorial ministers responsible for human rights meet immediately with renewed vigour to take ownership for effective consultations and implementation of Canada’s international human rights obligations.

RECOMMENDATION 24 – *Framework for Ratification and Implementation of Canada’s International Human Rights Obligations (page 240)*

a) The Committee recommends that the federal government develop a new policy framework for the signature, ratification and implementation of Canada’s international human rights obligations, including:

- Notice to Parliament, the provinces and territories at the commencement of human rights treaty negotiations, with an undertaking to begin consultations with Parliament, all levels of government, and stakeholders;
- Regular reporting on the progress of international treaty negotiations to Parliament, the provinces and territories, and the public;
- Production of a national impact study to be made available to all involved in the consultations;
- Regular feedback from those involved in the consultation process with the federal government;
- Tabling of a “Declaration of intent to comply” in Parliament signalling the executive branch’s intent to proceed towards signature of the international instrument, accompanied by a reasonable timeframe for Parliament to provide its input before signature; and

- **Tabling of the international instrument in Parliament once it has been ratified by the Executive, accompanied by an implementation plan including legal and financial implications, and a timetable for implementation. Parliament should be given sufficient time to provide input into this plan.**
- b) **The Committee recommends that the federal government certify that all new federal legislation passed is in compliance with Canada's international human rights obligations.**
- c) **The Committee recommends that the federal government develop a transparent and inclusive process to ensure consultation with Parliament and the public when preparing Canada's country reports to the various UN treaty bodies. Canada's country reports, the UN treaty bodies' Concluding Observations, and a follow-up Government Response should be tabled in Parliament and referred for committee scrutiny, subject to a fixed timeline for response.**

Chapter 1 - Introduction

A. THE MANDATE

On 3 November 2004, the Standing Senate Committee on Human Rights (“the Committee”) was authorized by the Senate to examine and report upon Canada’s international obligations with respect to the rights and freedoms of children. In particular, the Committee was authorized to “examine our obligations under the United Nations *Convention on the Rights of the Child*; and whether Canada’s legislation as it applies to children meets our obligations under this Convention.”

The Committee heard from more than 215 witnesses during its intensive study of the impact of the UN *Convention on the Rights of the Child*¹ (“the Convention”) on Canadian law. From the outset, the Committee reviewed Canada’s international obligations with respect to children’s rights and freedoms as a case study reflecting the broader implications of ensuring that domestic legislation and policies comply with Canada’s international human rights obligations, and in keeping with a broader mandate that began with this Committee’s first report in 2001, *Promises to Keep: Implementing Canada’s Human Rights Obligations*.²

In terms of children’s rights more specifically, the Committee sought to answer the following questions: Is Canada implementing the *Convention on the Rights of the Child* in domestic law and policy, and if so, how? Are all children in Canada benefiting from the Convention? Are specific groups of vulnerable children benefiting from it? Has the Convention furthered federal, provincial, and territorial policies for such children? Are the federal, provincial, and territorial governments and society responding to the challenges confronting today’s children?

The Committee proceeded to evaluate obstacles to the protection of children’s rights and freedoms as enunciated by the *Convention on the Rights of the Child*, looking at whether

¹ UN General Assembly Resolution 44/25 1989, see Appendix B.

² Report of the Standing Senate Committee on Human Rights, *Promises to Keep: Implementing Canada’s Human Rights Obligations*, December 2001, available at: www.parl.gc.ca/37/1/parlbus/commbus/senate/com-e/huma-e/rep-e/rep02dec01-e.htm The mandate of this study was to examine issues relating to human rights, and, *inter alia*, to review the machinery of government dealing with Canada’s international and national human rights obligations.

Canadian policy and legislation reflect the provisions of, and are in compliance with international obligations under, this international human rights instrument. Although the Committee focused its attention on federal government initiatives in this regard, it recognizes that Canada's provincial and territorial governments have a concomitant obligation to implement the *Convention on the Rights of the Child* within their respective jurisdictions. The Committee also looked at the role of Parliament within this framework.

While the Committee originally received a mandate to report back to Parliament by 22 March 2005, it quickly realized that a much more exhaustive study into children's rights was emerging from its investigations. Because of this, and the exigencies of the parliamentary calendar, the deadline for presentation of the Committee's final report was ultimately extended to 31 April 2007, and the Committee tabled an Interim Report in the Senate in November 2005, entitled *Who's in Charge Here? Effective Implementation of Canada's International Obligations with Respect to the Rights of Children*.³

B. THE COMMITTEE'S WORK

1. An In-Depth Examination of the Canadian Context and Fact-Finding Missions Abroad

a) The Canadian Context

Between December 2004 and October 2006, the Committee met with witnesses⁴ in Ottawa to discuss the rights of children and the manner in which Canada is implementing its international obligations under the Convention. Witnesses represented perspectives from government, the academic, legal and advocacy fields, and youth. The Committee also held a series of hearings across Canada to examine the particular needs and concerns of provincial government officials, provincial ombudsmen for children, non-profit service organizations, and children themselves. In St. John's, Newfoundland; Fredericton, New Brunswick; Charlottetown, Prince Edward Island; Halifax, Nova Scotia; Winnipeg,

³ Report of the Standing Senate Committee on Human Rights, *Who's in Charge Here? Effective Implementation of Canada's International Obligations with Respect to the Rights of Children*, November 2005, available at www.parl.gc.ca/38/1/parlbus/commbus/senate/com-e/huma-e/rep-e/rep19nov05-e.htm

⁴ See Appendix A for a complete list of witnesses.

Manitoba; Regina, Saskatchewan; Edmonton, Alberta; Vancouver, British Columbia; Montréal, Quebec; and Toronto, Ontario, the Committee met with witnesses to discuss the provincial laws currently in place, how those laws are being implemented, various concerns surrounding children's rights, awareness of the Convention and children's rights, and how children are affected by laws and policies at the municipal, provincial, and federal levels. Throughout these hearings the Committee placed special emphasis on hearing the voices of children themselves. This testimony, combined with the UN Committee on the Rights of the Child's Concluding Observations with respect to Canada, make up the prime source of evidence for our report. As a final note, it is important to understand that when the Committee refers to the federal government's position in this report, it is referring the position of cumulative Canadian governments, rather than the position of one particular government in time.

b) The Comparative Analysis

In addition to its hearings in Canada, the Committee went on two fact-finding missions abroad to conduct comparative analyses, and to explore the intricacies of international human rights mechanisms and international perspectives on the Convention, as well as examining how other countries are implementing the Convention. Early in its mandate, the Committee travelled to Geneva, Switzerland, to meet with United Nations officials and other institutions to gain a better understanding of Canada's international obligations with regard to children's rights under the Convention and other UN instruments as a basis for its future work. At that time, the Committee observed proceedings before the Committee on the Rights of the Child and met with its members for a perspective on the Convention and the operation of the monitoring body, and to receive comments and criticisms on Canada's progress in meeting its obligations. The Committee also met with: the NGO Group for the *Convention on the Rights of the Child*; officials from the United Nations High Commissioner for Refugees; officials at UNICEF (the United Nations Children's Fund) working with the UN Study of Violence Against Children; officials at the International Labour Office; officials at the Inter-Parliamentary Union; and Mehr Khan Williams, the Deputy High Commissioner for Human Rights (as she then was).

During that same fact-finding mission, the Committee travelled to Stockholm, Sweden, often seen as a leader with respect to implementation of the Convention. The Committee took this opportunity to learn how a like-minded government undertakes its reporting obligations under the Convention, and implements its international obligations in domestic law. The Committee met with a network of parliamentarians working on children's rights, as well as officials from the Swedish Ministry of Health and Social Affairs. Finally, the Committee met with Lena Nyberg, the Children's Ombudsman in Sweden, to hear about the operation of her office and her perspective on the status of children's rights in Sweden. Our Committee learned that although Sweden declared its commitment to the Convention through a Bill approved by Parliament and conducted a review of its legislation with respect to children, the country has not directly implemented the Convention into specific enabling legislation.

In October 2005, the Committee travelled to the United Kingdom to continue with its comparative analysis, given the similarities between the United Kingdom and Canada in terms of parliamentary framework and approach to international law. The British government is currently dealing with many of the same issues as Canada, such as treatment of children in the criminal justice and child welfare systems, corporal punishment, and high rates of child poverty. The Committee met with researchers and officials from various departments and organizations in London and Edinburgh, including: the All Party Parliamentary Group on Children; the Joint Committee on Human Rights; the Scottish Youth Parliament; and the Children's Commissioners for England and Scotland. The Committee also met with a variety of voluntary sector organizations and gained their perspectives on the implementation of children's rights and the ability of the government to meet its obligations.

During this mission, the Committee also travelled to Oslo, Norway. It found that not only did Norway lead the way for the world by establishing the first-ever national children's ombudsman in 1981, it was the only dualist⁵ country that had expressly incorporated the *Convention on the Rights of the Child* through domestic enabling

⁵ For an explanation of "dualism" see Chapter 2, section C of this report.

legislation.⁶ The Committee met with officials from the departments of Foreign Affairs, Justice, and Children and Family Affairs, as well as researchers and organizations, including the Ombudsman for Children, Save the Children Norway, and Childwatch International Research Network.

2. Who's in Charge Here? The Interim Report

In November 2005, the Committee tabled its Interim Report (*Who's in Charge Here? Effective Implementation of Canada's International Obligations with Respect to the Rights of Children*) in the Senate. That report discussed the history and background of children's rights in Canadian and international human rights law, as well as the application of the Convention in domestic law. It also discussed lessons learned, highlighting witnesses' concerns about the lack of full implementation of the Convention by the federal, provincial, and territorial governments because of jurisdictional issues, the apparent unwillingness of various levels of government at times to comply strictly with the terms of the Convention, the lack of uniform standards, an over-complex reporting process to the Committee on the Rights of the Child, and a lack of public awareness about the Convention and children's rights.

The Interim Report ultimately focused on the process of implementation of international law in Canada, with particular emphasis on children's rights and the *Convention on the Rights of the Child*. In it, the Committee explored witnesses' concerns and recommended a number of mechanisms to improve Canada's ratification and incorporation processes with respect to both the *Convention on the Rights of the Child* and international human rights treaties more generally. Based on an approach utilizing policy, legislation, and education, the Committee's recommendations aimed to create a more effective and accountable system. The Committee also suggested means to ensure a more effective application of the Convention in Canada. Through the Interim Report, the Committee called on the federal government to comply with its legal obligations respecting children – by improving institutions, public policy, and laws that affect them. However, we also noted that the provincial and territorial governments have jurisdiction

⁶ For a discussion of Norway's *Human Rights Act, 2003*, see footnote 455.

over many aspects of children's rights and need to be included in any discussion with respect to more effective implementation.

3. This Final Report

Using the Interim Report as a departure point, this Final Report reiterates and reinforces those earlier more process-oriented recommendations and goes on to focus on specific articles of the Convention that were signalled to the Committee as issues of particular concern in Canada. Broadly, these included issues of participation and expression, violence against children, exploitation of children, youth criminal justice, child welfare, adoption and identity issues, migrant children, health issues, early childhood development and care, child poverty, sexual minority children,⁷ and Aboriginal children. In continuing its in-depth examination of these issues, the Committee attempted to respond to concerns that it heard expressed across Canada in order to ensure respect for and effective implementation of specific articles of the Convention to benefit all children, in particular those most marginalized in our society.

⁷ The term sexual minority children is used in this report to refer to individuals under 18 who identify themselves as lesbian, gay, bisexual, transgender, or questioning their sexual orientation.

Chapter 2 - Implementation of International Law in Canada

This chapter uses the Committee's previous reports, *Promises to Keep* and *Who's in Charge Here?*, as building blocks to provide an overview of the implementation of international treaties in Canadian law before delving into the specifics of the *Convention on the Rights of the Child*.

A. RATIFICATION

Canada's executive branch of government has the power to sign and ratify international treaties. This power is not specifically delineated in Canada's Constitution; rather, authority to do so stems from the Royal Prerogative. Cabinet prepares an Order in Council authorizing the Minister of Foreign Affairs to sign an Instrument of Ratification. Once this Instrument is deposited with the appropriate authority, it is considered that Canada has ratified the convention.⁸

Parliament, representing the legislative branch of government, is not involved in this process. There is currently no formal role for Parliament, with no legal requirement for parliamentary approval or study of a treaty prior to ratification. In fact, Parliament is not notified when treaty negotiations begin, nor is it consulted concerning the preparation, cost, desirability or impact of such a treaty. Only on an *ad hoc* basis does the government table treaties with Parliament following their ratification. As a result, international human rights treaties that are not directly incorporated into domestic legislation bypass the parliamentary process.⁹

⁸ *Capital Cities Communications Inc. v. Canadian Radio-Television Commission* [1978] 2 S.C.R. 141; *Attorney General for Canada v. Attorney General for Ontario*, [1937] 1 D.L.R. 673 (J.C.P.C.) ("*Labour Conventions Case*"); Joanna Harrington, "State Actors and the Democratic Deficit: The Role for Parliament in Treaty-Making," Document prepared for the Department of Justice, May 2005, pp. 6-7, 23-24.

⁹ Harrington, "State Actors and the Democratic Deficit," pp. 2-4, 24-28.

B. RESERVATIONS

At the time of ratification, the Executive also has the power to enter reservations to international treaties that allow them. A reservation is a unilateral statement made when signing or ratifying a treaty which essentially excludes or modifies the application of certain provisions of the treaty in the reserving state.¹⁰ Its purpose is to allow a state to ratify an international instrument in order to let the consensus document go forward, while still recognizing that a certain provision within that instrument is not in this country's best interests. Although the *Vienna Convention on the Law of Treaties* discourages states from making reservations and requires that they "must be compatible with the goal and objective of the treaty,"¹¹ ultimately, reservations allow the international community to reach a compromise – encouraging the participation of as many states as possible by allowing them to protect important national interests, while still ensuring the integrity of the treaty.¹² Canadian governments have traditionally been opposed to making reservations to human rights treaties based on the "belief that human rights treaties must establish universal schemes rather than a collection of different legal programs for each State."¹³

C. APPLICATION AND IMPLEMENTATION

Government and academic witnesses appearing before the Committee for both this study and *Promises to Keep* described the process of implementing international treaties in domestic law in some detail. They highlighted the fact that Canada operates according to a "dualist" model similar to many other Commonwealth nations insofar as the actual incorporation and application of international treaties in domestic law is concerned. In Canada, a treaty that has been signed and ratified by the government requires incorporation through domestic legislation to be actually enforceable at the national level

¹⁰ Nicole LaViolette, *The Principal International Human Rights Instruments to which Canada has not yet Acceded* (January 2005), p. 62.

¹¹ *Vienna Convention on the Law of Treaties*, A/Conf 39/28, art. 2.

¹² J.-Maurice Arbour, *Droit international public*, 4th ed. (Cowansville, Quebec: Éditions Yvon Blais, 2002), p. 99; LaViolette, *The Principal International Human Rights Instruments to which Canada has not yet Acceded*, p. 62.

¹³ LaViolette, *The Principal International Human Rights Instruments to which Canada has not yet Acceded*, p. 62.

– this is neither a self-executing nor an automatic process.¹⁴ This is in contrast to the monist model operational in countries such as the United States, where once Congress ratifies a treaty, that instrument is enforceable in American law.¹⁵ As stated by Maxwell Yalden, former member of the UN Human Rights Committee, “Canada is a dualist country where, in theory, we must legislate in order to bring an international treaty into Canadian law in order for it to be justiciable in the courts.”¹⁶ Despite popular misconceptions, signing and ratifying a treaty have limited legal effect, if any, in domestic law.

Witnesses from the departments of Justice and Foreign Affairs noted that the Canadian government has two basic approaches to dealing with the domestic implementation of international conventions. In some instances, the government will develop specific legislation to ensure the domestic application of a particular international instrument. This is the case in relation to the *Rome Statute* of the International Criminal Court,¹⁷ implemented in Canada through the *Crimes Against Humanity and War Crimes Act*,¹⁸ the United Nations *Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on their Destruction*,¹⁹ implemented through the *Anti-Personnel Mines Convention Implementation Act*,²⁰ and the Geneva Conventions for the Protection of War Victims, implemented by the *Geneva Conventions Act*.²¹

Another approach is to avoid the development of specific enabling legislation, and to rely on existing domestic laws that are presumed to already respond to the concerns set out in the international treaty. When applying this approach, government officials conduct a review and analysis of existing law before ratifying the treaty to determine

¹⁴ *Capital Cities Communications Inc. v. Canadian Radio-Television Commission*; “Labour Conventions Case,” Harrington, “State Actors and the Democratic Deficit,” p. 7.

¹⁵ However, Benjamin Dolin notes that “the impact of ratified treaties in U.S. law is not always clear. American jurisprudence has held that some treaties are not self-executing.” See *International Instruments and their Applicability in Canada* (Ottawa: Library of Parliament, July 2005), p. 23.

¹⁶ Maxwell Yalden, former member, United Nations Human Rights Committee, testimony before the Committee, 21 March 2005.

¹⁷ A/CONF.183/9.

¹⁸ S.C.2000, c. 24.

¹⁹ A/C.1/57/L.36.

²⁰ S.C. 1997, c. 33.

²¹ R.S.C. 1985, c. G-3.

whether any amendment or new law is required to comply with the treaty obligations.²² The federal government has adopted a policy of consulting with provinces and territories before signing and ratifying treaties on matters within non-federal jurisdiction in order to deal with these complexities. In the case of human rights treaties, this practice was formalized in an agreement reached at a 1975 meeting of federal and provincial ministers responsible for human rights that included the establishment of the Continuing Committee of Officials on Human Rights.²³ As stated by Irit Weiser, former Director of the Human Rights Law Section at the Department of Justice, during her appearance before this Committee in 2001:

As a prelude to ratification, the officials of the Department of Justice consult with colleagues in other federal departments; other agencies; the provinces and territories through the vehicle of [the] continuing committee; and with Aboriginal groups and other non-governmental groups. This consultation determines several things. It decides whether existing domestic laws and policies already conform to the treaty obligations. It determines if there are inconsistencies and if there are it decides whether new legislation and policies should be adopted or whether existing legislation and policies should be amended. And finally, it determines whether it is appropriate to maintain the domestic position even though it is inconsistent with the treaty provision and enter a reservation or a statement of understanding.²⁴

John Holmes of the Department of Foreign Affairs told us in 2001 that,

we do not ratify until all jurisdictions indicate they support ratification and are in compliance with the obligations contained therein... We would await the results of provincial action or indication. We would wait to see that they were in compliance with the instrument before we moved to ratification.²⁵

²² The Honourable Irwin Cotler, Minister of Justice, testimony before the Committee, 11 April 2005.

²³ *Promises to Keep*, p. 23. For a full discussion of the role of the Continuing Committee, see section D of this chapter.

²⁴ Irit Weiser, Director, Human Rights Law Section, Department of Justice, testimony before the Committee, 11 June 2001.

²⁵ John Holmes, Director, United Nations, Criminal and Treaty Law Division, Department of Foreign Affairs and International Trade, testimony before the Committee, 11 June 2001.

Federal government policy in this regard is set out in the *Core document forming part of the reports of States Parties: Canada*,²⁶ which forms part of Canada's periodic reports under international human rights treaties to the United Nations:

Some human rights matters fall under federal jurisdiction, others under provincial and territorial jurisdiction. Therefore, human rights treaties are implemented by legislative and administrative measures adopted by all jurisdictions in Canada. It is not the practice in any jurisdiction in Canada for one single piece of legislation to be enacted incorporating a particular international human rights convention into domestic law (except, in some cases, regarding treaties dealing with specific human rights issues, such as the 1949 Geneva Conventions for the protection of war victims). Rather, many laws and policies, adopted by federal, provincial and territorial governments, assist in the implementation of Canada's international human rights obligations.²⁷

Thus, international human rights treaties are rarely incorporated directly into Canadian law, but are indirectly implemented by ensuring that pre-existing legislation is in conformity with the obligations accepted in a particular convention. The argument is that because the federal government worked to ensure that Canada fulfils its obligations indirectly through the conformity of pre-existing legislation with the Convention, it does not have to directly incorporate the Convention by means of enabling or any other more explicit form of legislation. However, the government controls this verification process. Canada's approach to compliance is based on the government's opinion of its own conformity with the international instrument. The Committee learned that the federal government's unwillingness to directly incorporate human rights treaties is a key concern among a wide variety of witnesses.

Our Committee explored the concept of compliance and found that the term means the action or fact of being disposed to obey rules, or "meeting or in accordance with rules or standards."²⁸ "Compliance can be said to occur when the actual behavior of a given subject conforms to prescribed behavior..."²⁹ Witnesses appearing before the

²⁶ HRI/CORE/1/Add.91, 12 January 1998.

²⁷ *Ibid.*, para. 138.

²⁸ Judy Pearsal, ed., *Concise Oxford English Dictionary: Thumb Index Edition*, 10th ed. revised (Oxford: Oxford University Press, 2002).

²⁹ Oran Young, *Compliance and Public Authority* (Baltimore: Johns Hopkins University Press, 1979), p. 172.

Committee expressed uncertainty as to whether Canada's pre-existing legislation/policy-oriented approach to international human rights treaties can truly be termed explicit compliance and urged the Committee to find ways to expressly implement the terms of the Convention. In particular, Jeffery Wilson expressed his frustration with the government's approach:

[Do not] delude yourself that this convention has some meaning. I make the point that it is not ratified into the Canadian law and so it has no binding nature and is more likely to be interpreted. It is of moral persuasion only.³⁰

The uncertainties noted by Jeffery Wilson were present in the testimony of federal ministers before the Committee. Former Justice Minister Irwin Cotler asserted that Canada is in full compliance with the Convention because of the federal government's consultation process and policy approach to implementation:

[A]s Minister of Justice, in that regard, one of my duties is to ensure that our legislation is in compliance with the Charter of Rights and Freedoms, and our international human rights obligations, including the children's rights convention...

[Since ratification], we have continued to review all proposed legislative and policy initiatives that have a direct impact upon children to ensure compliance with the Charter, the [Convention] and other international human rights obligations. In so doing, we consider children's rights from a contextual perspective because if we are to truly promote a child's best interests, it is necessary to consider all of their rights together.³¹

Former Health Minister Ujjal Dosanjh gave a more cautious response to the question of whether Canada is effectively implementing the Convention:

[W]hen nations enter into international obligations and international conventions, one assumes, and I do as well, that we look upon those as obligations... Whether we are able in reality to live up to the obligations that we have signed on to is another question.³²

Witnesses emphasized that the important question arising from the debate is: despite federal government assurances that it has reviewed existing laws and that Canada is in

³⁰ Jeffery Wilson, lawyer, testimony before the Committee, 13 December 2004.

³¹ Cotler testimony.

³² The Honourable Ujjal Dosanjh, Minister of Health, testimony before the Committee, 6 June 2005.

compliance with a Convention, if no legislation directly incorporates the terms of the Convention, what recourse is available to a child, adult, or institution that does not believe that Canada's laws are in compliance with its international human rights commitments? At the present time, no body or government other than the relevant UN human rights treaty body has a mandate to respond to such concerns.³³

Witnesses expressed concern that the government provides no clear message and little accountability. The only time the federal government is ever obligated to explain precisely how Canada is in compliance with a convention is every few years, in its report to the relevant UN Committee. Maxwell Yalden expressed his frustration with the Canadian approach: "I do not believe that we can hide behind this non-incorporation doctrine."³⁴

Former Minister Cotler's testimony before the Committee outlines the ambiguity of this situation:

I would conclude by saying that, first, it is a rights-based international treaty and that, second, we seek to have our legislation conform to that rights-based international treaty. We do not have the expressed obligation with regard to the international treaties as we do, for example, with respect to the obligatoriness in the manner of the Canadian Charter of Rights and Freedoms, but there is a presumption of conformity with respect to international law. We seek, even without that notion of obligatoriness, to ensure that our legislation does in fact comport with our international obligations, having regard to the implementing issue where you may have mixed jurisdictional approaches, federal, provincial and the like.³⁵

The Committee notes that Canada's federal nature produces unique challenges for efficient and effective application of human rights conventions. Because many conventions span so many issues falling within different jurisdictions set out in the Constitution, and because of the sheer complexity of coordinating 13 jurisdictions, the federal government frequently faces situations in which federal-provincial-territorial

³³ These treaty bodies are: the Committee on the Rights of the Child, the Human Rights Committee, the Committee on Economic, Social and Cultural Rights, the Committee on the Elimination of Racial Discrimination, the Committee on the Elimination of Discrimination against Women, the Committee Against Torture, and the Committee on Migrant Workers.

³⁴ Yalden testimony.

³⁵ Cotler testimony.

cooperation is slow. As stated by the Honourable Ujjal Dosanjh, “Having come from the provincial government to the federal government, I can tell you that a lack of coordination exists at all levels of government and remains a serious issue.”³⁶

It is important to note that the federal government’s treaty-making and ratification powers do not give Parliament exclusive jurisdiction to adopt the legislation necessary to implement Canada’s international legal obligations. Implementation of international treaties respects the jurisdictional boundaries laid out in the *Constitution Act, 1867*. As stated by the Privy Council in the seminal 1937 *Labour Conventions Case*, the federal government’s need to implement international treaty commitments cannot be relied on as a basis for federal encroachment into areas of provincial jurisdiction.³⁷

As a result, implementation of international treaties where provincial laws and policies are affected is the responsibility of the federal, provincial and territorial governments. With reference to the *Convention on the Rights of the Child*, Wayne MacKay of Dalhousie University stated that,

[t]he federal government signed the Convention on the Rights of the Child that makes Canada as a nation state responsible for the implementation of that covenant. However, under our constitutional system the provinces and territories are responsible for the implementation of the covenant.

As the *Labour Conventions* case indicates, the federal government cannot enforce implementation.³⁸

Government witnesses noted that this need for provincial legislation and cooperation to ensure full compliance with Canada’s international obligations has occasionally proven difficult in the past. Canada’s inability to ratify the International Labour Organization’s *Convention No. 138 Concerning Minimum Age for Admission to Employment*³⁹ demonstrates this point. Each province has its own minimum age for labour, as is permitted by its primary jurisdiction over labour issues according to section 92(13) of the Constitution. As a result, while Canada remains broadly respectful of the principles

³⁶ Dosanjh testimony.

³⁷ Dolin, *International Instruments and their Applicability in Canada*, pp. 12-14.

³⁸ Wayne MacKay, Professor, Faculty of Law, Dalhousie University, testimony before the Committee, 16 June 2005.

³⁹ 1015 U.N.T.S. 297.

enumerated in Convention No. 138, some provinces do allow employment for children below the minimum age specified in the Convention. Canada has come under considerable criticism for these discrepancies and the federal government's inability to ratify the Convention.⁴⁰

Yet, Canada has an obligation to make best efforts to implement international treaties domestically, no matter what jurisdictional hurdles are entrenched in the Constitution. Peter Leuprecht of the Université du Québec à Montréal and Maxwell Yalden emphasized to our Committee that even when consultations and cooperation among the various jurisdictions prove difficult, once Canada has ratified an international treaty, lack of federal jurisdiction is not a valid excuse for failing to live up to the nation's international obligations. This position is clear in international law, as stated in the *Vienna Convention on the Law of Treaties*:

Art. 26 Every treaty in force is binding upon the parties to it and must be performed by them in good faith.

Art. 27 A party may not invoke the provisions of its internal law as justification for its failure to perform a treaty. This rule is without prejudice to article 46.

This presumption of good faith means that states must intend the treaties they ratify to be effective – notably, through implementation. Signature is not a mere formality but entails real responsibilities to fulfil a state's international obligations to its utmost capacity.⁴¹ The failure of any State Party to furnish adequate means of enforcement constitutes a violation of the treaty. This point was emphasized in *Ariel Hollis Waldman v. Canada*,⁴² a case in which the UN Human Rights Committee criticized the federal government for violating the equality provision of the *International Covenant on Civil and Political Rights* through Ontario's funding of a separate Catholic school system –

⁴⁰ Jane Stewart, Acting Executive Director, Employment Sector, International Labour Office, and Frans Roselaars, Director of the Infocus Programme on the Elimination of the Worst Forms of Child Labour, International Labour Office, testimony before the Committee, 27 January 2005.

⁴¹ Rebecca Cook, "Violations of Women's Human Rights," (1994) *Harvard Human Rights Journal*, Vol. 7, 1994, p. 147.

⁴² ICCPR/C/67/D/694/1996, Human Rights Committee, 67th Session, 18 October to 5 November 1999.

despite the fact that this preferential treatment is entrenched in section 93 of the *Constitution Act, 1867*.⁴³

D. ENFORCEMENT MECHANISMS

As suggested earlier in this chapter, enforcement mechanisms are an important part of the implementation process when discussing compliance with international law. While international trade treaties are traditionally bolstered by the presence of strong enforcement mechanisms that regulate trade disputes between nations, it is only recently that the international human rights sphere has begun to use more specific mechanisms to ensure that there are consequences for nations that fail to adhere to their obligations.

A clear example of such a mechanism is the recently implemented International Criminal Court, which provides criminal sanctions for those perpetrating crimes against humanity and war crimes. More common are the UN treaty bodies, which inspect the actions of states with respect to a particular human rights treaty – for example, the Committee on the Rights of the Child. These treaty bodies examine country reports and issue Concluding Observations commenting on and criticizing a country's level of compliance with a particular treaty, and providing recommendations for improvement. The treaty bodies fulfil an important monitoring role and their Concluding Observations carry significant political, moral and persuasive weight, although States Parties have no legal obligation to put these recommendations into effect.

In Canada, the Continuing Committee of Officials on Human Rights prepares Canada's reports to the UN treaty bodies. Representatives from the Continuing Committee appeared before this Senate Committee in June 2001 and April 2005 to provide us with information as to the Continuing Committee's role and mandate.

⁴³ Despite the Human Rights Committee's rebuke, the federal government responded that education was a provincial responsibility and that it could do nothing. For its part, the Ontario government refused to change its laws based on this ruling.

1. The Continuing Committee of Officials on Human Rights

The Continuing Committee is an organization formed within the Human Rights Program of the Department of Canadian Heritage as a permanent mechanism for coordination and collaboration with provinces and territories regarding the ratification and domestic implementation of international human rights instruments. It includes federal, provincial, and territorial representatives from every jurisdiction and meets twice a year as a forum for dialogue and exchange.

The Continuing Committee's mandate does not give it any policy- or decision-making authority, although it can make recommendations to the ministers responsible on its views concerning the development of Canada's positions on international human rights issues. In the past, the Continuing Committee has played an active role in the signing and ratification of international human rights treaties.⁴⁴

According to Eileen Sarkar at the Department of Canadian Heritage:

Since 1975, this committee has enabled the federal, provincial and territorial governments to share their views on human rights issues and exchange information on implementation of human rights treaties...

The committee is also involved in preparing for Canada's appearances before UN treaty bodies, and its members are more frequently participating as members of the Canadian delegation. The committee examines issues associated with each of the human rights treaties, and discusses specific UN recommendations in more depth, including sharing best practices.⁴⁵

2. Adequacy of the Reporting and Follow-Up Process

Some of the primary frustrations expressed to our Committee – both during these hearings, and in preparation for *Promises to Keep* – emphasized the inadequacy of Canada's reporting process and follow-up to the Concluding Observations issued by UN Committees. On a very practical level, our Committee heard that the Continuing Committee of Officials on Human Rights does not operate effectively and is not an

⁴⁴ LaViolette, *The Principal International Human Rights Instruments to which Canada has not yet Acceded*, p. 61.

⁴⁵ Eileen Sarkar, Assistant Deputy Minister, Department of Canadian Heritage, testimony before the Committee, 18 April 2005.

efficient mechanism for ensuring coordination among jurisdictions or with the various treaty bodies in Geneva and New York. The Continuing Committee does not have an adequate mandate to fulfil these expectations – it is a consultation and coordination mechanism only.

Witnesses' concerns go beyond the Continuing Committee's mandate and extend to the democratic deficit and complexity of the entire reporting and follow-up process. Concerns emphasized the lack of transparency, low levels of ministerial or other significant political involvement, and lack of parliamentary or public input. It was pointed out that such issues lie at the heart of any functioning democracy.

a) Reporting to the UN Committee

In putting together the country report for UN Committees, each federal, provincial, and territorial jurisdiction prepares its own submission.⁴⁶ Reports from all jurisdictions are then consolidated by the Continuing Committee of Officials on Human Rights to create Canada's final report to the UN Committee.

The process of consolidating lengthy reports from each jurisdiction can lead to unwieldy documents. In its latest Concluding Observations, the Committee on the Rights of the Child criticized the complexity and length of Canada's reports:

the submission of a synthesis report based on both federal and provincial reports would have provided the Committee with a comparative analysis of the implementation of the Convention and a more coordinated and comprehensive picture of the valuable measures adopted by Canada to implement the Convention.⁴⁷

The Continuing Committee's compilation of the report is also a painstakingly slow process that can take up to three years. But Maxwell Yalden points out that Canada's complex federal structure is not a valid excuse:

⁴⁶ The federal component of the report for the Committee on the Rights of the Child is prepared by the departments of Justice and Health.

⁴⁷ Committee on the Rights of the Child, *Concluding Observations*, CRC/C/15/Add.215, 27 October 2003,, para. 2; see Appendix E.

We have been rather slow sometimes in preparing the reports to the committees. From our point of view, that is inevitable because of our complex federal system. That does not cut much ice with an international body because Canada, not the individual provinces and territories, is party to the covenant... We cannot really use that as an excuse.⁴⁸

He also refers to the need to create a more streamlined report:

our reports would be much more impressive and a much more effective description of and defence of our views if they were shorter and if there were better consultations between and among the provinces and federal government.

Each province does things differently. Some provinces list all the illegal grounds of violation of human rights, others do not. Some do partly and others do not. There is no consistency at all and that makes for a bad report.⁴⁹

Concerns also emphasize the lack of real public or non-governmental input into development of the country report. This Committee's first report, *Promises to Keep*, criticized the absence of parliamentary input into or scrutiny of the reporting process.⁵⁰ With respect to the *Convention on the Rights of the Child*, while Canada's country report comprises solely federal, provincial, and territorial government contributions, NGO commentary has been given to the UN Committee in past years in a separate document prepared by the Canadian Coalition for the Rights of the Child.

It is important to note that the Office of the UN High Commissioner for Human Rights (OHCHR) has also recognized that its own demands are onerous and is currently considering how best to streamline the UN treaty bodies' process. Every treaty body currently faces extreme backlogs in terms of receipt and examination of country reports.⁵¹

Maxwell Yalden and members of the Committee on the Rights of the Child emphasized that this entire process needs to be transformed, both in Canada and within

⁴⁸ Yalden testimony.

⁴⁹ *Ibid.*

⁵⁰ *Promises to Keep*, pp. 24 and 31.

⁵¹ Deirdre Kent, Counsellor, Canadian Mission in Geneva, testimony before the Committee, 27 January 2005; OHCHR, "Enhancing the Human Rights Treaty Body System: The Treaty Bodies' Response to the Secretary-General's *Agenda for Further Change*," available at www.ohchr.org/english/bodies/treaty/reform.htm

the UN, in order to create a more comprehensive and coordinated reporting effort, with increased dialogue built into that new framework.

b) Concluding Observations of the UN Committee

The Geneva-based NGO Group for the *Convention on the Rights of the Child* and the UN Committee on the Rights of the Child also noted problems with Canada's approach to receiving the UN Committee's Concluding Observations. When a UN treaty body issues its Concluding Observations, the Continuing Committee's role is to keep provincial and territorial governments apprised of any comments on the scope of the rights guaranteed by the convention. However, these consultations are held behind closed doors. Although the Concluding Observations are available on the UN and Canadian Heritage's websites, little other effort is made to publicly disseminate UN Committees' comments and criticisms or to ensure public debate or follow-up. Witnesses criticized the lack of transparency in this process, noting the absence of any role for Parliament in reception and dissemination of the Concluding Observations.

Witnesses expressed concern that few people in Canada are aware of these Committees' Concluding Observations, in the context of children's rights, commenting that these Observations often have significant impact within the children's rights community for one year and are then forgotten.⁵² The Committee on the Rights of the Child itself has also noticed a lack of follow-up in Canada because parliamentarians are not sufficiently informed of their nation's obligations. Members comment that this is particularly so given that Concluding Observations tend to be "shelved" by the government.

Anne Bayefsky of York University, appearing before the Committee in

2001, commented on the lack of transparency both in the reporting process and in receipt of the Concluding Observations:

⁵² Elaine Petitat-Côté, International Baby Food Action Network, and Hélène Sakstein, IBFAN Arab World, NGO Group for the *Convention on the Rights of the Child*, testimony before the Committee, 28 January 2005.

It is not an open process. There is no dialogue in general... it is basically not a consultative process, which I think is extremely unfortunate. There is no reason it could not be a more constructive and inclusive process as to what our report should say and where we should go from here. The answer is basically that no one sees [country reports] in advance at the moment.

They are submitted, but what happens to them afterwards? The committees make recommendations on the basis of those reports. What happens to those recommendations? If an NGO has been particularly active and is able to drag along certain media, the recommendations get media attention. For the most part they are completely ignored. There is no process here in Canada to take the report and the subsequent commentary, to review them together in an open fashion and put forward constructive approaches to responding to those criticisms. Those reports go nowhere, until the next time they are due.⁵³

c) Our Committee's Findings

On the basis of testimony from across Canada and abroad, our Committee has found that the current reporting and dissemination processes are too complex, leading to problems of coordination, compounded by the omission of important stakeholders. Lack of transparency is a significant criticism. The Continuing Committee appears to work behind a veil of secrecy. Few in government, let alone the public, know anything about its composition, actions or deliberations. Although consultations held *in camera* do facilitate free discussion, they do little to promote awareness of the specific conventions and the state of human rights in Canada.

In addition, although the Continuing Committee itself meets twice a year, there have been no intergovernmental meetings on human rights at the ministerial level in more than 15 years. In *Promises to Keep*, this Committee criticized the Continuing Committee's inactivity in this respect. On 11 June 2001, Norman Moyer, Chair of the Continuing Committee, told our Committee that:

These hearings also come at a useful time for my committee. The Continuing Committee of Officials on Human Rights is in the process of reviewing its mandate and the way it operates. Therefore, any comments

⁵³ Anne Bayefsky, Professor, Department of Political Science, York University, testimony before the Committee, 4 June 2001.

that you may have on the nature of the committee will be much appreciated.⁵⁴

In testimony before the Committee in 2005, Eileen Sarkar of Canadian Heritage stated that “[y]our comments were taken into account, and I believe at the last meeting of the [Continuing] [C]ommittee there was some discussion of the possibility of proposing to ministers a ministerial-level meeting in 2006.”⁵⁵ Our Committee awaits information about any action taken in this respect.

Ultimately, the Committee’s comments made in *Promises to Keep* remain true:

The real issue and problem is not, however, that the Continuing Committee of Officials on Human Rights is not providing a public forum for domestic accountability and scrutiny of Canada’s implementation of its international human rights commitments. This is not its job. The real problem for Canada is that no other official body or institution of government is performing this function either.⁵⁶

What is lacking is real political involvement in the process at a ministerial level. As well, there is no role for Parliament to provide input or to monitor events with respect to Canada’s human rights treaties. This democratic deficit – which is only increased by the lack of transparency inherent in the current system, in the absence of both awareness-raising and public input – leads the Committee to conclude that Canada’s current reporting process and follow-up mechanisms are wholly inadequate.

⁵⁴ Norman Moyer, Assistant Deputy Minister, Canadian Identity, Chair of the Continuing Committee of Officials on Human Rights, testimony before the Committee, 11 June 2001.

⁵⁵ Sarkar testimony.

⁵⁶ *Promises to Keep*, p. 24.

Chapter 3 - Children's Rights and the Canadian Context

A. BRIEF HISTORY OF THE CONVENTION

As noted by Margaret Somerville of McGill University in her testimony before the Committee, the *Convention on the Rights of the Child*

expresses in a fairly succinct form the collected wisdom of millennia of human experience with regard to parents and children, and added to it is a late 20th century sensitivity to articulating human rights and how it should be if we could always achieve what we most want to achieve with respect to human rights.⁵⁷

The creation of the *Convention on the Rights of the Child* was an ambitious and complex undertaking. Drafting took eleven years, from March 1978 to March 1989. Canada played an instrumental role in this process, facilitating communication between over 40 countries with varying religious, ideological, cultural and political traditions. Former Prime Minister Brian Mulroney was also significant to the adoption process, jointly initiating and co-chairing the World Summit on Children at the United Nations in 1990 to encourage ratification of the Convention and draft a ten-year plan of action for children.

Reinforced by such political will, the Convention was ultimately adopted by the UN General Assembly in November 1989, representing the first time that the needs and interests of children were “expressly formulated in terms of human rights.”⁵⁸ The instrument captured the imagination of world leaders and was embraced with overwhelming enthusiasm by the entire world community. It is currently the most widely subscribed-to international treaty in history, ratified by 193 nations.⁵⁹ Canada was able to ratify the Convention once all the provinces and territories signalled their support for the

⁵⁷ Dr. Margaret Somerville, Centre for Medicine, Ethics, and Law, McGill University, testimony before the Committee, 15 May 2006.

⁵⁸ Ombudsman for Denmark, Sweden, Iceland, and Norway, *The Best Interests of the Child in our Time: A Discussion Paper on the Concept of the Best Interests of the Child in a Nordic Perspective*, October 1999, p. 7.

⁵⁹ Only the United States and Somalia had signed but failed to ratify the Convention as of March 2007.

Convention by sending letters of support to the federal government – Canada signed the Convention on 28 May 1990 and ratified it on 13 December 1991.

B. THE CRITICAL IMPORTANCE OF FOCUSING ON CHILDREN'S RIGHTS

1. The Rights-Based Approach

[C]hildren should have rights as human beings not as “human becomings.”⁶⁰

In attempting to highlight the necessity of addressing children's rights, the Senate Committee is fully aware that the world may have grown weary of the phrase “our children are our future.” While the statement remains true, witnesses have emphasized that the government, Parliament, and civil society need to move beyond that cliché and recognize that children are citizens *today*. Only in understanding this can we begin to foster a true culture of rights and responsibility in our society. Clarifying the rights-based perspective and guaranteeing its application in the Canadian context is crucial to ensuring a fulfilled and meaningful maturation of rights.

The Committee heard from witnesses that the rights-based perspective – which is embedded in the *Convention on the Rights of the Child* and modern international human rights law – emphasizes the need to focus on children as individuals with their own set of rights. The idea is that children are not merely objects of concern to be protected, but are also to be recognized as persons in their own right. As such, they will also begin to understand their responsibilities in society. As stated by Justice Jean-Pierre Rosenczveig, President of the Board of Directors of the International Bureau for Children's Rights, the *Convention on the Rights of the Child*

is deliberately oriented towards the 21st century in its recognition of the child as a person endowed with a heart and feelings, possessing rights, and not just as a small, fragile being who has to be defended against others and against himself or herself.⁶¹

⁶⁰ Otto Driedger, Professor Emeritus, University of Regina, School of Human Justice, testimony before the Committee, 19 September 2006.

⁶¹ Justice Jean-Pierre Rosenczveig, President of the Board of Directors of the International Bureau for Children's Rights, International Bureau for Children's Rights Conference, *Making Children's Rights Work:*

Viewing children's rights within this framework means that children are afforded protection beyond the level of simple survival or basic needs, thus facilitating the creation of a sustainable environment in which such rights can be protected in the longer term.⁶² The rights-based approach "means describing situations not in terms of human needs, or areas of development, but in terms of the obligation to respond to the rights of individuals. This empowers people to demand justice as a right, not as a charity."⁶³ As stated by the UN Committee on the Rights of the Child, "[i]mplementation of the human rights of children must not be seen as a charitable process, bestowing favours on children."⁶⁴ Charity does not allow individuals to achieve their full potential because it tends to treat people as objects, rather than as active participants in the development of their well-being.⁶⁵

In essence, the three primary features of the rights-based approach are as follows:⁶⁶

- **All rights are equal and universal**
- **All people, including children, are the subject of their own rights and should be participants in development, rather than objects of charity**
- **An obligation is placed on states to work towards ensuring that all rights are being met**

This approach demands a holistic form of programming to ensure widespread protection, while paying particular attention to the most vulnerable and marginalized in our society in order to ensure the full and equal development of individual rights.⁶⁷ The framework also

National and International Perspectives, Montréal, 18 November 2004.

⁶² Rana Khan, Legal Officer, United Nations High Commissioner for Refugees (Canada), testimony before the Committee, 2 May 2005.

⁶³ Mary Robinson, "Foreword," in *A Human Rights Conceptual Framework for UNICEF*, by Marta Santos Pais (Florence, Italy: UNICEF, 1999), p. iv.

⁶⁴ Committee on the Rights of the Child, *General Comment No. 5: General Measures of Implementation of the Convention on the Rights of the Child (arts. 4, 42 and 44, para. 6)*, CRC/GC/2003/5, 27 November 2003, para. 11.

⁶⁵ Tara Collins, Senator Landon Pearson and Caroline Delany, Discussion Paper, *Rights-Based Approach*, April 2002, p. 3; Anne McGillivray, Professor, University of Manitoba, testimony before the Committee, 26 September 2005.

⁶⁶ Collins, Pearson and Delany, *Rights-Based Approach*, p. 1.

⁶⁷ Suzanne Williams, Managing Director, International Institute for Child Rights and Development,

places a moral and legal obligation on states to make sure that everyone's rights are being respected and to determine and remedy those cases where this is not happening. By ratifying human rights treaties, states accept the responsibility of implementing the rights enshrined therein – states become legally accountable... A rights-based approach provides standards that can be measured through monitoring in order to ensure accountability of States parties and other stakeholders to children's rights.⁶⁸

According to Kathy Vandergrift, formerly of World Vision Canada and now Chair of the Canadian Coalition for the Rights of Children, the rights-based approach:

adds real value because it puts the whole child in the centre, and then looks at all components and all factors that can impact that child's situation. It is not just addressing one need – food, water or some of those things – but it looks at the whole child and treats that child as an actor in the situation, not just as a passive recipient.⁶⁹

The rights-based approach represents a move from a more reactive case-based focus to one which is more proactive and systemic, centred on prevention.⁷⁰ One example of how this approach operates is as follows:

[I]f 100 children need to be immunized, the needs- or problem-based approach would say that after 70 children are immunized we have a great success rate of 70%. The rights-based approach recognizes that there are still 30 children that need immunization. The rights-based approach reaches out to even the most marginalized children and makes a difference in all children's lives.⁷¹

Advocates of this approach indicate that its aim is to build a culture of respect at home and throughout the world, with a sense of accountability *to* children, not merely *for* them. Kay Tisdall, Social Policy Professor at the University of Edinburgh, noted that such accountability “has to go all the way down.”⁷² Only through these means can children establish a sense of accountability themselves.

testimony before the Committee, 21 February 2005.

⁶⁸ Collins, Pearson, and Delany, *Rights-Based Approach*, p. 4.

⁶⁹ Kathy Vandergrift, Chair of the Working Group on Children and Armed Conflict, World Vision Canada, testimony before the Committee, 14 February 2005.

⁷⁰ Dr. Cindy Kiro, Children's Commissioner of New Zealand, testimony before the Committee, 30 May 2005.

⁷¹ Williams testimony.

⁷² Kay Tisdall, Social Policy Professor, Programme Director, University of Edinburgh, testimony before the Committee, 12 October 2005.

2. Why Children?

The rights-based approach is of particular importance in the discussion of children's rights because of children's often intense vulnerability, the frequent competition between children's rights and those of adults, and the resulting ease with which a more paternalistic and needs-based approach can be adopted.

Canadian society clearly recognizes the importance of children. Former Senator Landon Pearson's introductory message to Canada's 2004 Plan of Action, *A Canada Fit for Children*, highlights why this Committee found it so important to conduct our study on children's rights:

The 21st Century will belong to our children and our children's children. It is their dreams and aspirations, shaped by the circumstances into which they are born and which surround them as they grow up, that will give the Century its final definition. Those who are under eighteen today constitute more than a third of the world's population and are already profoundly affecting our lives by their decisions and actions. For their sake as well as our own, we must do everything possible to reduce the suffering that weighs them down, open up their opportunities for success and ensure them a culture of respect. This is what the young people meant when they spoke to the General Assembly of the United Nations at the Special Session on Children in May 2002. "We want a world fit for children," they said, "because a world fit for us is a world fit for everyone."⁷³

Within this context, many witnesses before the Committee emphasized the particular vulnerability of children. Children are the only group in Canada – left out on the basis of age alone – with no voice, no vote, and little access to powerful lobby groups, the media, or legal services. The Committee on the Rights of the Child and the UNICEF Innocenti Research Centre point out that **children's voices rarely inform government decisions, yet they are one of the groups most affected by government action or inaction. Children are not merely underrepresented; they are almost not represented at all.**⁷⁴

As stated by Al Aynsley-Green, Children's Commissioner for England, and also

⁷³ *A Canada Fit for Children*, p. 9.

⁷⁴ UNICEF Innocenti Research Centre, *Independent Institutions Protecting Children's Rights, Innocenti Digest*, No. 8, June 2001, pp. 1-3 and 13; Committee on the Rights of the Child, *General Comment No. 2: The Role of Independent National Human Rights Institutions in the Promotion and Protection of the Rights of the Child*, para. 5, CRC/GC/2002/2, 15 November 2002,.

emphasized by Kay Tisdall, we need to recognize that children are the “citizens of today, not of tomorrow,”⁷⁵ and ensure that our policies reflect this reality.

In doing so, our policies and laws should strive to uphold dignity for all children. Dignity and respect are fundamental concepts underlying the *Convention on the Rights of the Child* and this Committee’s study. As stated by Fred Milowsky, Deputy Child and Youth Officer of British Columbia, the Convention “is a vision that asserts the fundamental dignity of children... If you focus on dignity, then it is a natural flow to rights, because it becomes an entitlement.”⁷⁶

And yet it is important to note that such dignity and rights are founded in an even larger context. Mr. Milowsky emphasized that **“the convention’s vision properly puts children at the centre, in the context of their family, their community, and their culture.”**⁷⁷ The *Convention on the Rights of the Child* is a holistic instrument that explicitly recognizes that children develop within different contexts – the family, the community, and school. As noted by Kathy Vandergrift, “[o]ne of the most beautiful things about the *Convention on the Rights of the Child* is that multilayered aspect. It is a child as an actor but not as an individual alone against the world. It is a child within a network of supportive environments that progressively develop the child’s capabilities.”⁷⁸ This concept of context is an important one when it comes to discussions of conflicting rights and the role of families. The Convention strives to uphold the dignity of children within the context of their community, while also recognizing the rights of those that surround children.

In fact, witnesses emphasized to the Committee that the protection of children’s rights is beneficial not just for children, but for society as a whole. Kathy Vandergrift went on to state that “[t]he more we understand the potential of children, the more we can shift that discussion away from needing to shape them if we understand that they also help to

⁷⁵ Professor Al Aynsley-Green, Children’s Commissioner for England, testimony before the Committee, 10 October 2005.

⁷⁶ Fred Milowsky, Deputy Child and Youth Officer of British Columbia, testimony before the Committee, 21 September 2006.

⁷⁷ *Ibid.*

⁷⁸ Kathy Vandergrift, Chair, Canadian Coalition for the Rights of Children, testimony before Committee, 23 October 2006.

shape our communities.”⁷⁹ Martha Mackinnon of Justice for Children and Youth put the impact of ensuring children's rights bluntly:

Sadly, as a Canadian society, we have not moved far enough towards thinking that, if we give someone rights, that does not mean that we have taken them away from us... That is not my perception of how human rights work. My perception is the more human rights all of us have, the better off we all are collectively. Therefore, the notion that to give a kid something does not hurt someone else is a message that we are not selling [effectively]. It is a message that I am a stronger, better parent. I am a stronger, better teacher. I am a stronger, better employer if every kid that I work with knows that he is just as much of a human being as I am, and that my rights are enhanced when every member of my society has them as well.⁸⁰

Pushing this concept further, Katherine Covell, Professor at the University College of Cape Breton Children's Rights Centre, highlighted “the incredible importance of respecting children's rights to the healthy development of society.”⁸¹

These comments provide the underpinning for the Committee's entire study. The protection of children's rights can have a profound effect not only on the child as an individual, but also on society as a whole. Suzanne Williams of the International Institute for Child Rights and Development reported a striking example of how one young person's realization of her rights has created a widening circle of positive change:

“Child rights saved my life.” These words were shared by a young Aboriginal Canadian woman at a session hosted by the International Institute for Child Rights and Development (IICRD) in March 2004. Just 6 years earlier this young person had attended a conference in Canada for young people who were sexually exploited through the sex trade. She learned for the first time then that she had rights: she mattered. From her perspective these rights made all the difference and gave her a reason to live. Today this young woman has exited the sex trade, attends University and helps other young people still exploited in the sex trade to learn about their rights and turn their lives around. This is just one example of the power of child rights. The challenge for Canada: to ensure that child rights

⁷⁹ *Ibid.*

⁸⁰ Martha Mackinnon, Executive Director, Justice for Children and Youth, testimony before the Committee, 18 April 2005.

⁸¹ Katherine Covell, Professor, University College of Cape Breton, Children's Rights Centre, testimony before the Committee, 7 February 2005.

are respected and implemented on a broad scale for the benefit of all children.⁸²

Ultimately, ensuring the promotion of and respect for children's rights strengthens recognition of children as individuals – full human beings capable of making meaningful choices with the right guidance. By enhancing the dignity of a child, we also enhance their acceptance of their role as a citizen with both rights and responsibilities. Kathy Vandergrift told our Committee that “[r]ights and responsibilities are the two sides of the coin; you cannot have one without the other.”⁸³ The idea is that by treating children as persons with responsibilities we can create future generations of responsible adults. Imbuing all levels of society with a culture of responsibility can only serve to improve the environment around us. These ideas were effectively given life by an example provided by Stephen Wallace at the Canadian International Development Agency:

Girls and boys under the age of 18 may not have a vote; they may not be given space to voice their concerns either. They may be among the most abused and exploited members of their societies. Yet, as we see in many developing countries, children are already running their households and contributing to their economy. They look after younger children and are even having children themselves. From the development perspective, children have the power to perpetuate cycles of poverty and violence. With our support, however, they also have the power to break those cycles and build a better future.⁸⁴

Kearney Healy, a lawyer who appeared before the Committee, echoed this view:

[Y]ou have to develop a policy which meets the needs of young people and allows them to develop into independent, successful adults; that is absolutely essential.

I would urge you to consider that children have a right to grow into adults who are successful human beings, pro-social, talented, reliable people who can take great pride in their accomplishments. I suggest that is implicit in your idea of a rights-based approach for young people. When that approach is taken, the transformation is amazing.⁸⁵

⁸² Suzanne Williams, “Meeting Canada’s Obligations under the UN *Convention on the Rights of the Child*: From Paper Concepts to Living Benefits for Children,” Brief submitted to the Committee, 21 February 2005, p. 3.

⁸³ Vandergrift testimony, 23 October 2006.

⁸⁴ Stephen Wallace, Vice-President, Policy Branch, Canadian International Development Agency, testimony before the Committee, 15 May 2006.

⁸⁵ Kearney Healy, lawyer, testimony before the Committee, 19 September 2006.

C. THE CONVENTION ON THE RIGHTS OF THE CHILD - AN OVERVIEW

1. The Convention

In essence, the Convention establishes common broad standards with respect to children's rights. Its provisions reflect many of the same principles expressed in other international human rights instruments, ensuring that such rights and responsibilities apply specifically to children (under the age of 18) by taking into account their particular needs and situations. The Convention outlines broad principles and specific rights, also ensuring that organizations monitoring the protection of children's rights can take the "different cultural, social, economic and political realities"⁸⁶ into account in their assessment.

The Convention contains three general principles to guide interpretation and implementation of the more specific articles protecting children's rights. Article 2 highlights the principle of non-discrimination:

Art. 2(1) States Parties shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child's or his or her parent's or legal guardian's race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status.

(2) States Parties shall take all appropriate measures to ensure that the child is protected against all forms of discrimination or punishment on the basis of the status, activities, expressed opinions, or beliefs of the child's parents, legal guardians, or family members.

Article 3 establishes the principle of the best interests of the child, which must be a primary consideration in all state decision-making affecting children:

Art. 3(1) In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.

⁸⁶ United Nations Office of the High Commissioner for Human Rights, *Fact Sheet No.10 (Rev.1), The Rights of the Child*, available at: www.unhcr.ch/html/menu6/2/fs10.htm

(2) States Parties undertake to ensure the child such protection and care as is necessary for his or her well-being, taking into account the rights and duties of his or her parents, legal guardians, or other individuals legally responsible for him or her, and, to this end, shall take all appropriate legislative and administrative measures.

(3) States Parties shall ensure that the institutions, services and facilities responsible for the care or protection of children shall conform with the standards established by competent authorities, particularly in the areas of safety, health, in the number and suitability of their staff, as well as competent supervision.

Finally, article 12 of the Convention emphasizes the right of the child to be heard in all matters affecting him or her. Those views should be given due weight “in accordance with the age and maturity of the child.”

Art. 12(1) States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child.

(2) For this purpose, the child shall in particular be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly, or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law.

This recognition of the need to hear from children is a defining element in the protection of children's rights, clarifying how all governments and organizations should approach any initiatives with respect to children.

In addition to these general principles, the Convention also contains numerous specific rights surrounding many aspects of children's lives. These include the right:

- To a name and nationality from birth
- Not to be separated from their parents, except by competent authorities for their well-being
- To family reunification

- To protection from physical or mental harm, including sexual abuse and other forms of exploitation
- To the highest attainable standard of health
- Of disabled children to special treatment, education and care
- To education
- To play

Along with these rights, states have a number of enumerated obligations, such as the obligation:

- To provide parents with appropriate assistance and develop child-care policies
- To protect children from the illegal use of drugs and involvement in drug production or trafficking
- Not to impose capital punishment or life imprisonment for crimes committed before the age of 18
- To treat children involved in infringements of the penal law in a way that promotes their sense of dignity and worth and aims at reintegrating them into society
- Not to involve any child under 15 in hostilities
- To allow children of minority and indigenous populations to freely enjoy their own culture, religion and language
- To provide appropriate treatment or training for recovery and rehabilitation to children who have suffered mistreatment, neglect or exploitation
- To make the rights set out in the Convention widely known to both adults and children

2. The Optional Protocols

The Convention is accompanied by two Optional Protocols that deal with specific issues contained in the primary document. The first, on the *Sale of Children, Child*

Prostitution and Child Pornography,⁸⁷ came into force on 18 January 2002. It extends the protections guaranteed to children by Convention articles 11 (on the illicit transfer and non-return of children abroad), 21 (adoption), and 32 to 36 (economic exploitation and trafficking in children). The Protocol emerged out of concern about the sexual exploitation of children and recognizes the underlying conditions that make children vulnerable to such exploitation, including poverty and a lack of education. As of December 2006, there were 113 States Parties to this Optional Protocol. Canada ratified the document on 14 September 2005.

The second Optional Protocol, on the *Involvement of Children in Armed Conflicts*,⁸⁸ came into force on 12 February 2002. It relates to article 38 of the Convention, which prohibits children under the age of 15 from being recruited into the armed forces. States Parties to this Protocol must declare the age at which they will permit voluntary recruitment into their armed forces and guarantee that no one under the age of 18 shall engage in hostilities. As of December 2006, there were 110 States Parties to this Optional Protocol. Canada ratified the document on 7 July 2000.

It is important to note that a state may be a party to the Convention even if it does not ratify the Optional Protocols. The reverse is also true. For example, the United States, which has not ratified the *Convention on the Rights of the Child*, has ratified both Protocols.

3. The Committee on the Rights of the Child

Article 43 of the Convention provides for the establishment of a UN Committee on the Rights of the Child to monitor States Parties' implementation of the Convention. The Committee, created in 1991, is based in Geneva and meets three times a year, for four weeks each session. It comprises 18 independent experts (an increase from the original 10), each of whom represents a State Party to the Convention and is elected for a four-year term. Canada is currently represented by David Brent Parfitt.

⁸⁷ General Assembly Resolution 54/263, 25 May 2000, see Appendix C.

⁸⁸ General Assembly Resolution 54/263, 25 May 2000, see Appendix D.

States Parties are required to submit an implementation report to the Committee within two years of ratifying the Convention, and every five years thereafter. Practice has also grown such that the NGO community often submits an alternate report as well. After studying each report, the Committee adopts “Concluding Observations” that comment on the state’s progress in implementing the Convention and recommend improvements in areas in which the state is falling behind. Although the UN Committee has no enforcement mechanism, the Concluding Observations do have political, moral and persuasive authority. The UN Committee encourages all States Parties to make their reporting process transparent and to publish their reports, along with the Concluding Observations, in order to stimulate public debate on the Convention.

The Committee on the Rights of the Child monitors compliance not only with the Convention but also with the Optional Protocols. States Parties’ reports on their progress in implementing the Convention must further address their implementation of the Protocols. In 2004, Canada agreed to report on its implementation of its National Action Plan, *A Canada Fit for Children*,⁸⁹ as well.

The UN Committee also holds general discussions on issues related to children’s rights, such as the economic exploitation of children, the rights of the child in the family context, the rights of the girl child, and youth criminal justice. Such thematic discussions are held approximately once a year and may lead to requests for studies; they may also serve as a basis for work on interpreting the articles of the Convention. The Committee does not, however, hear individual complaints.

D. THE GAP BETWEEN RIGHTS RHETORIC AND REALITY

And yet, despite the importance of children’s rights and the fact that the rights-based approach is engrained in the Convention and in other international human rights instruments, witnesses appearing before our Committee emphasized that many in Canada and elsewhere continue to resist its full implementation. The concept of “rights” is often

⁸⁹ *A Canada Fit for Children: Canada’s Plan of Action in Response to the May 2002 United Nations Special Session on Children*, Government of Canada, April 2004.

seen as dangerous or threatening to the rights of the more powerful.⁹⁰ Margaret Somerville emphasized that in practice, children's rights often lose when they come into conflict with the rights of adults:

Our societies are focused on intense individualism and on our rights; and since we are adults, children get left out... The Charter does apply to children; it is just that, in practice, they cannot claim their Charter rights. Everyone has rights under the Charter, and then there is the exercise of those rights. Children are not able to exercise their own rights. Furthermore, where they conflict with adults, the adults win.⁹¹

Others are simply unaware of the Convention or its implications. While our Committee was dismayed that so few witnesses were aware of the Convention and the rights enshrined in it, the UNICEF Innocenti Research Centre notes that even when individuals are aware of the Convention

the radical nature of the [Convention], recognizing children explicitly as subjects of rights, is neither fully accepted or properly understood by many governments. There is particular neglect of the principle of promoting the best interests of children through respect for their rights and of the obligation to listen and act on the views of children as an essential step to the realization of their rights.⁹²

Witnesses were critical of the perceived gap between the rhetoric and the realities of children's rights in Canada. They expressed grave concern that there is often a disconnect between intent and concrete compliance with the *Convention on the Rights of the Child* in Canada. While the government attempts to conform to the rights-based approach in theory, many witnesses argued that it is hesitant to be bound by it in practice.

Children's rights have undergone significant evolution in the history of Canada. Children are no longer considered a form of chattel or possession, nor are they any longer simply part of a family unit.⁹³ Children today are persons in their own right.⁹⁴ Yet, while international human rights mechanisms are strengthening in the modern world, Canada

⁹⁰ Aynsley-Green testimony.

⁹¹ Somerville testimony.

⁹² *Innocenti Digest*, No. 8, June 2001, p. 4.

⁹³ For a more in-depth discussion of the history of children's rights in Canada, see Chapter 2 of this Committee's Interim Report, *Who's in Charge Here? Effective Implementation of Canada's International Obligations with Respect to the Rights of Children*.

⁹⁴ Similar views were expressed by Professor Anne McGillivray of the University of Manitoba.

must incorporate them into our national laws before they can be of any force and effect in this country. Numerous witnesses appearing before the Committee emphasized that Canada needs to ensure that it rises to meet its obligations. Lawyer Jeffery Wilson expressed deep concern that the *Convention on the Rights of the Child* is legally meaningless in this country – ineffectively implemented and thus of little assistance to the protection of children's rights:

When I try to explain the convention to children who are 15, 16 and 17, eventually one character... asks, "What good is the convention?" That is a valid point... [F]or Canada to have, in some ways, a convention that does not have a binding, legal effect to be distinguished from other international conventions that it has ratified, is almost regressive... The convention appears to be good in the eyes of the courts but it is not effective because it is not binding. Its effect is the same as when I say there is a convention that states you cannot hit a woman but it has no binding effect. That would be a strange document.⁹⁵

As was noted in *Who's in Charge Here?*, Canada is regarded as a leader in the field of human rights. Since World War II, Canada has played a significant role in the development and promotion of new human rights initiatives, such as the International Criminal Court, and it is now party to over 30 international human rights instruments. And yet, many witnesses pointed out that today Canada's reputation is better than its actual actions. As stated by Maxwell Yalden, former member of the UN Human Rights Committee:

I am of the opinion that Canada has always played an important role in the international community as regards human rights, but I have to admit that I am getting more and more impatient with this very rich community of ours which has a tendency to teach lessons to others without looking at its own performance.⁹⁶

Billie Schibler, Children's Advocate for the Province of Manitoba, also emphasized the importance of ensuring children's rights at home before looking abroad:

In Canada, we as a country are very clearly failing to protect our most vulnerable, failing to preserve our most precious and presumably cherished resource, our children. We are an advanced country. We have natural resources and we have brilliant leaders, but unless we can find

⁹⁵ Wilson testimony.

⁹⁶ Yalden testimony.

success in ensuring a brighter future for our children, unless we can provide them with hope, unless we can start listening and hear what they are saying, we as a province are lost, we as a country have no future.⁹⁷

Renée Vaugeois, of the John Humphrey Centre for Peace and Human Rights, noted that “Often we share the Convention on the Rights of the Child with... youth when we engage with them. The last group we talked with said, ‘This is just a bunch of words. These rights get broken all the time.’”⁹⁸

Our Committee notes that given the realities of children’s rights within our borders, Canada will not be able to continue to say it is an international leader. Canada cannot insist that other countries respect the rights of children if it is failing its own children at home.⁹⁹

These were the concerns that underscored the Committee’s study and this report. The Committee concluded that its study of this issue must strive to further the debate on children’s rights, thus raising awareness about these rights, and creating an impetus for government action. Our study must address the concerns of one of the most vulnerable, yet promising, segments of Canadian society in order to ensure that their voices are heard. Through this report, the Committee aims to highlight these concerns in order to bring Canada into compliance with the *Convention on the Rights of the Child*.

As stated by the former Minister of Health, Ujjal Dosanjh, “we cannot rest on our laurels.”¹⁰⁰ Martha Mackinnon told us that Canada cannot “lose the powerful moral high ground”¹⁰¹ with which we started:

It is important to note that Canada did not just sign and ratify the UN convention. It was a proponent; it was a leader; it urged other countries to sign; it helped in the drafting; and it worked to make this the international treaty and standard for children’s human rights. If Canada is a proponent, then it is also critical that we be a leader in the world in incorporating the convention into domestic law...

⁹⁷ Billie Schibler, Children’s Advocate for the Province of Manitoba, testimony before the Committee, 18 September 2006.

⁹⁸ Renée Vaugeois, Executive Manager, John Humphrey Centre for Peace and Human Rights, testimony before the Committee, 20 September 2006.

⁹⁹ Vandergrift testimony, 23 October 2006.

¹⁰⁰ Dosanjh testimony.

¹⁰¹ Mackinnon testimony.

This is something on the international stage to which Canada is committed. In my submission, it would be very sad if the signing of an international treaty became the high-water mark. If you do not move to implementation, then what Canada has said is: Here is what we think the international standard is; other countries should follow it, we do not need to.¹⁰²

¹⁰² *Ibid.*

Chapter 4 - Implementing the Convention on the Rights of the Child

Government and academic witnesses, as well as those representing children's rights advocacy organizations across Canada, testified before the Committee with respect to Canada's implementation of the *Convention on the Rights of the Child*. Their evidence and recommendations were supplemented by information obtained from various UN and international organizations in Geneva, including the Committee on the Rights of the Child; as well as examples of how the Convention operates in like-minded nations, such as Sweden, Norway, and the United Kingdom. Finally, the Committee heard from young people across Canada and abroad as to their perspectives on the Convention and its impact on their lives.

The Committee concluded that implementation is key to making the Convention work in Canada. One of the primary obstacles to the successful protection of children's rights in this country is the lack of effective implementation mechanisms.

A. APPLICATION AND IMPLEMENTATION

Art. 4 States Parties shall undertake all appropriate legislative, administrative, and other measures for the implementation of the rights recognized in the present Convention...

1. No Enabling Legislation

Government witnesses told our Committee that after Canada ratified the *Convention on the Rights of the Child* on 13 December 1991, the federal government did not adopt specific or global enabling legislation to introduce the Convention into domestic law. Instead, in line with its usual approach to international human rights treaties, the government entered into a consultation process prior to ratification, reviewing and analyzing existing laws across Canada to determine whether any new laws or amendments were needed to ensure conformity with the treaty. The former Minister of

Justice described the government's traditional approach to the *Convention on the Rights of the Child*:

Given, therefore, that Canada is a federal state and that jurisdictions on many issues relating to children fall to the provinces or are shared with them, the federal government respects the importance of working with the provinces and territories, both before the Canadian ratification of an international instrument as well as afterwards, to ensure that Canada meets our international obligations.¹⁰³

After some adjustment following these consultations, the government appeared satisfied that Canadian law was in conformity with the *Convention on the Rights of the Child* and that the Convention could be deemed to be implemented by means of the *Canadian Charter of Rights and Freedoms*,¹⁰⁴ federal and provincial human rights legislation, and other federal and provincial legislation pertaining to matters addressed in the Convention.¹⁰⁵

The government faced jurisdictional obstacles in arriving at this conclusion. Children's rights and issues cut across all jurisdictions – from child protection and family law, which are mostly under provincial jurisdiction; to immigration and criminal law, which are under federal jurisdiction. While all provinces may have legislation that conforms to the principles outlined in the Convention, they often approach those standards through different frameworks. The vast array of laws in each province and territory, as well as the differing interpretations of or approaches to them, add to the task of those determining whether Canada's laws are in compliance with its international obligations. Canada's position with respect to the *Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography* provides an example of the coordination hurdles inherent in the ratification process. Although the federal government ratified that Protocol in September 2005, jurisdictional issues ensured that nearly four years elapsed between signature and ratification.

¹⁰³ Cotler testimony.

¹⁰⁴ *Canadian Charter of Rights and Freedoms*, Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982 (U.K.)*, 1982, c. 11.

¹⁰⁵ With reservations to articles 21 and 37(c) of the Convention. Cotler testimony. For a further discussion of these reservations, see section A2 of this chapter.

Nevertheless, the federal government has argued in the past that even though Canada's laws do not always match the explicit wording of the Convention, this consultation process ended in an assurance that the standards contained in Canada's laws are now either equal to or even higher than those set out in the Convention itself.

This policy-based approach to Canada's international obligations led numerous witnesses to argue that Canada is not in full compliance with the Convention. They asked our Committee whether pointing to the Charter and various human rights and other legislation is sufficient to ensure compliance with the Convention, given the specific nature of the rights pertaining to children laid out within it. Without ensuring that the explicit language used in the Convention is replicated in Canada's laws, how can we be sure that children's rights are actually enforceable, or that Canada is in full compliance with the Convention?

2. Statutory and Judicial Interpretation

Despite the lack of specific enabling legislation in Canada with respect to the Convention, witnesses pointed out that, in addition to its application through various human rights and other legislation, the Convention has another means of influencing Canadian law. International law, including the *Convention on the Rights of the Child*, can be used by the courts and other decision-making bodies as an aid to interpreting legislation affecting children's rights in Canada. There is a common-law interpretive presumption that any legislation adopted in Canada is consistent with its international legal obligations, even if not explicitly implemented in domestic law – the presumption is that Parliament intended to legislate in a manner consistent with these obligations.¹⁰⁶ It must be kept in mind, however, that this perspective is only occasionally argued or used in the courts.

The Supreme Court of Canada's decision in *Baker v. Canada (Minister of*

¹⁰⁶ *Promises to Keep*, p. 20; Stephen Toope, "Inside and Out: The Stories of International Law and Domestic Law," (2001) *University of New Brunswick Law Journal*, Vol. 50, 2001, p. 15; *Pushpanathan v. Canada*, [1998] 1 S.C.R. 982.

Citizenship and Immigration)¹⁰⁷ is one of the leading decisions in Canada on the influence of international law on domestic obligations where the international instrument in question has not been explicitly implemented in Canadian law. With reference to the *Convention on the Rights of the Child*, the court cited a passage from *Driedger on the Construction of Statutes*:

[The] legislature is presumed to respect the values and principles enshrined in international law, both customary and conventional. These constitute a part of the legal context in which legislation is enacted and read. In so far as possible, therefore, interpretations that reflect these values and principles are preferred.¹⁰⁸

The majority of the court in *Baker* ruled that although Canada had not incorporated the *Convention on the Rights of the Child* into domestic law, the Convention's guiding principle making the best interests of the child a primary consideration in decision-making concerning children should have played a role in the government's decision-making process in this particular instance. The court cited the important role of international human rights law as a "critical influence on the interpretation of the scope of the rights included in the *Charter*."¹⁰⁹ As noted in *Reference re Public Service Employee Relations Act (Alberta)*,¹¹⁰ international law is a relevant and persuasive authority with respect to the interpretation and application of the Charter. Testimony before the Committee from outside Canada could just as easily apply at home – Scotland's Commissioner for Children and Young People, Kathleen Marshall, observed the "creeping authority"¹¹¹ of the Convention in domestic law. She noted that in Scotland, the Convention is achieving a higher domestic profile through "the back door."¹¹²

¹⁰⁷ [1999] 2 S.C.R. 817. In this case, Baker, an illegal immigrant, was ordered deported from Canada. She appealed the decision on humanitarian and compassionate grounds, partially due to the fact that her Canadian-born children would be left behind without the care of their mother. Citizenship and Immigration Canada affirmed the deportation decision without providing reasons, the issue was then sent for judicial review and was later appealed to the Supreme Court of Canada.

¹⁰⁸ Ruth Sullivan, *Driedger on the Construction of Statutes*, 3rd ed. (London: Butterworths, 1994), p. 330.

¹⁰⁹ *Baker v. Canada (Minister of Citizenship and Immigration)*, para. 70. See also *Slaight Communications Inc. v. Davidson*, [1989] 1 S.C.R. 1038 and *R. v. Keegstra*, [1990] 3 S.C.R. 697.

¹¹⁰ [1987] 1 S.C.R. 313.

¹¹¹ Kathleen Marshall, Scotland's Commissioner for Children and Young People, testimony before the Committee, 12 October 2005.

¹¹² *Ibid.*

However, witnesses emphasized that although international human rights norms have a role to play domestically, it is still a secondary one. International law is a consideration in the judicial decision-making process, but ultimately, the values reflected in international instruments that are not implemented in domestic law only help to inform the contextual approach to statutory interpretation.¹¹³ While international law may be used to determine matters related to public policy, its effect on domestic law is restricted to “elucidation of Parliamentary intent.”¹¹⁴ Even in *Baker*, the Supreme Court emphasized the persuasive, rather than the obligatory, force of the Convention.¹¹⁵ As stated by Jean-François Noël,

[d]espite a certain degree of openness by the Supreme Court of Canada to relying on the Convention on the Rights of the Child for interpretation purposes, it nevertheless remains that, as long as the Convention on the Rights of the Child has not been incorporated in domestic law, it will not have force of law, and compliance with its principles will be subject to the laws in effect in Canada.¹¹⁶

Because the *Convention on the Rights of the Child* has not been incorporated into Canadian law, it cannot be used as the direct basis for any claim. Irit Weiser clarified this point in her testimony before the Committee in 2001:

If someone felt that Canada was violating a particular article of that convention, they could not start an action in Canadian courts based on that particular article of the convention. They could try to find something in our Charter or some other piece of legislation and argue that the convention affects the interpretation of the domestic law or of our Charter and amounts to a violation, but they cannot start their court action based on the treaty alone.¹¹⁷

¹¹³ *Baker v. Canada (Minister of Citizenship and Immigration)*, para. 70; Dolin, *International Instruments and their Applicability in Canada*, pp. 8-9.

¹¹⁴ Dolin, *International Instruments and their Applicability in Canada*, p. 8.

¹¹⁵ The Honourable Justice Jacques Chamberland, International Bureau for Children’s Rights Conference, *Making Children’s Rights Work: National and International Perspectives*, Montréal, 19 November 2004; Jutta Brunnée and Stephen Toope, “A Hesitant Embrace: Baker and the Application of International Law by Canadian Courts,” *The Canadian Yearbook of International Law*, Vol. 40, 2002, p. 3.

¹¹⁶ Jean-François Noël, Director General, International Bureau for Children’s Rights, testimony before the Committee, 21 February 2005.

¹¹⁷ Weiser testimony.

B. RESERVATIONS

Witnesses in both Canada and Geneva provided the Committee with information about Canada's reservations and status with respect to the Optional Protocols to the *Convention on the Rights of the Child*. Canada filed two reservations and a statement of understanding with respect to the Convention's applicability in Canada as a result of the consultation process that took place prior to ratification.

1. Article 21 – Customary Care

The first of these reservations and the statement of understanding concern article 21 of the Convention, which refers to domestic and inter-country adoption.

Reservations

(i) Article 21

With a view to ensuring full respect for the purposes and intent of article 20(3) and article 30 of the Convention, the Government of Canada reserves the right not to apply the provisions of article 21 to the extent that they may be inconsistent with customary forms of care among aboriginal peoples in Canada.

Statement of understanding

Article 30

It is the understanding of the Government of Canada that, in matters relating to aboriginal peoples of Canada, the fulfilment of its responsibilities under article 4 of the Convention must take into account the provisions of article 30. In particular, in assessing what measures are appropriate to implement the rights recognized in the Convention for aboriginal children, due regard must be paid to not denying their right, in community with other members of their group, to enjoy their own culture, to profess and practice their own religion and to use their own language.

John Holmes of the Department of Foreign Affairs told the Committee in 2001 that the government adopted this approach to article 21 in order to ensure that recognition of customary adoption among Aboriginal peoples in Canada was not precluded by the Convention requirement that adoptions be authorized by competent authorities, in accordance with applicable laws and procedures.¹¹⁸

¹¹⁸ Holmes testimony.

2. Article 37(c) – Detention of Young Offenders in Separate Facilities

The second reservation concerns article 37(c), which deals with the youth criminal justice system, requiring States Parties to detain young offenders in separate facilities from adult offenders.

Reservations

(ii) Article 37(c)

The Government of Canada accepts the general principles of article 37(c) of the Convention, but reserves the right not to detain children separately from adults where this is not appropriate or feasible.

Witnesses told us that the government adopted this reservation for a number of reasons. The first was to provide some leeway for remote northern communities in Canada, where building separate facilities for a small number of young offenders is often impractical and costly, and where putting a child in a separate facility often involves sending him or her a great distance from the family. The government was also concerned about avoiding the situation in which a child who turns 18 during his or her term of incarceration must suddenly be moved into an adult facility. Finally, the government was concerned about incarcerating young children with more dangerous youth offenders.

However, despite these justifications, Canada has been criticized by the Committee on the Rights of the Child and by numerous witnesses for its unwillingness to withdraw its reservations and conform to international standards in these regards.

3. Article 3(2) of the *Optional Protocol on the Involvement of Children in Armed Conflicts*

Upon ratifying the Optional Protocol, Canada made the following declaration concerning article 3(2), which requires States Parties allowing voluntary recruitment to the national armed forces for children under 18 to put specific safeguards in place:

Declaration:

Pursuant to article 3, paragraph 2, of the *Optional Protocol to the Convention on the Rights of the Child on Involvement of Children in Armed Conflicts*, Canada hereby declares:

1. The Canadian Armed Forces permit voluntary recruitment at the minimum age of 16 years.
2. The Canadian Armed Forces have adopted the following safeguards to ensure that recruitment of personnel under the age of 18 years is not forced or coerced:
 - (a) all recruitment of personnel in the Canadian Forces is voluntary. Canada does not practice conscription or any form of forced or obligatory service. In this regard, recruitment campaigns of the Canadian Forces are informational in nature. If an individual wishes to enter the Canadian Forces, he or she fills in an application. If the Canadian Forces offer a particular position to the candidate, the latter is not obliged to accept the position;
 - (b) recruitment of personnel under the age of 18 is done with the informed and written consent of the person's parents or legal guardians. Article 20, paragraph 3, of the *National Defence Act* states that 'a person under the age of eighteen years shall not be enrolled without the consent of one of the parents or the guardian of that person';
 - (c) personnel under the age of 18 are fully informed of the duties involved in military service. The Canadian Forces provide, among other things, a series of informational brochures and films on the duties involved in military service to those who wish to enter the Canadian Forces; and
 - (d) personnel under the age of 18 must provide reliable proof of age prior to acceptance into national military service. An applicant must provide a legally recognized document, that is an original or a certified copy of their birth certificate or baptismal certificate, to prove his or her age.

Currently, Canada allows voluntary recruitment to the Canadian Armed Forces at the age of 16; however, the *National Defence Act*¹¹⁹ has been amended to ensure that no one under the age of 18 is sent into a combat zone.

C. ENFORCEMENT MECHANISMS

As noted earlier, the enforcement mechanism established by the *Convention on the Rights of the Child* is the UN Committee on the Rights of the Child, which receives periodic reports on Canada's compliance with the treaty. The Continuing Committee of Officials on Human Rights is charged with facilitating preparation of Canada's country reports to the UN Committee.

¹¹⁹ R.S.C. 1985, c. N-5.

D. CANADA'S FEDERAL NATURE

Canada's general handling of its treaty ratification and implementation process may be the primary obstacle to effective protection of children's rights in Canada; but a number of other, more specific, factors also play a role. Inevitably, Canada's federal nature adds a level of complexity to implementation of the Convention in Canada. Jurisdiction is a significant issue when applying children's rights on the ground.

Witnesses across Canada and abroad, including the UN Committee through its Concluding Observations, noted that Canada lacks uniform national standards in a number of key areas with direct impact on children's rights. This situation has arisen because of Canada's constitutional structure and the broad nature of the Convention itself, which touches on a variety of issues under both federal and provincial jurisdictions. The Committee heard testimony as to varying standards across Canada concerning the minimum age for employment,¹²⁰ the provision of public health care to autistic children and children with foetal alcohol syndrome disorder (FASD),¹²¹ the separation of young offenders from adults,¹²² and the age at which child protection laws apply.¹²³

Through its hearings, the Committee also learned that the institutions established to protect children's rights in each province perform significantly different functions, with varying levels of independence and abilities to investigate and remedy violations of the rights of children. Nine provinces in Canada currently have a child and youth advocate. These bodies retain a loose affiliation and dialogue through the Canadian Council of Provincial Child and Youth Advocates. Some examples of these institutions and their differences were set out in Chapter 4 of our Interim Report. Although none of these bodies are constituted under legislation referring to the *Convention on the Rights of the Child*, in practice, all make reference to the Convention in the course of their work.¹²⁴

¹²⁰ For more information on this issue, see Chapter 7.

¹²¹ For more information on this issue, see Chapter 14.

¹²² For more information on this issue, see Chapter 8.

¹²³ For more information on this issue, see Chapter 9.

¹²⁴ Linda C. Reif, *The Domestic Application of International Human Rights Law in Canada: The Role of Canada's National Human Rights Institutions*, Paper prepared for the Department of Justice, 2005, pp. 31-32 and 49-51.

However, the UNICEF Innocenti Research Centre notes that, despite a country's federal nature, governments need to be careful to ensure that jurisdictional differences do not "lead to discrimination against some children because they happen to live in a certain province, state or region."¹²⁵ Members of the Committee on the Rights of the Child told us that they expect the federal government to comply with the Convention despite the complexities of ensuring that federal, provincial, and territorial laws conform. The UN Committee sees Canada's difficulties with its federal structure as internal. Its latest Concluding Observations highlight this point:

The Committee notes that the application of a considerable part of the Convention falls within the competence of the provinces and territories, and is concerned that this may lead, in some instances, to situations where the minimum standards of the Convention are not applied to all children owing to differences at the provincial and territorial level.

The Committee urges the Federal Government to ensure that the provinces and territories are aware of their obligations under the Convention and that the rights in the Convention have to be implemented in all the provinces and territories through legislation and policy and other appropriate measures.¹²⁶

In its General Comment on implementing the Convention, the UN Committee also emphasized that,

decentralization of power, through devolution and delegation of government, does not in any way reduce the direct responsibility of the State party's Government to fulfil its obligations to all children within its jurisdiction, regardless of the State structure.¹²⁷

E. THE COMMITTEE'S COMMENTS

It appears to our Committee that the federal government's approach to compliance with children's rights, and with the Convention in particular, is inadequate. As noted in our Interim Report, as well as this and the previous chapters, jurisdictional complexities, the absence of effective institutions, an uncertain approach to human rights law, and lack

¹²⁵ UNICEF Innocenti Research Centre, *Summary Report: Study on the Impact of the Implementation of the Convention on the Rights of the Child*, 2004, p. 16, available at:

www.unicef-icdc.org/publications/pdf/CRC_Impact_summaryreport.pdf

¹²⁶ Committee on the Rights of the Child, *Concluding Observations*, para. 8-9.

¹²⁷ Committee on the Rights of the Child, *General Comment No. 5*, para. 40.

of transparency and political involvement indicate that the *Convention on the Rights of the Child* is being ineffectively applied in the Canadian context.

This is so despite the hopeful tone adopted in *Baker v. Canada (Minister of Citizenship and Immigration)* concerning the government's obligation to respect the values outlined in the Convention. Although international human rights norms have been given domestic scope by the government and courts, their role is still a secondary one. While international law is a consideration in the judicial decision-making process, the values reflected in international instruments that are not directly incorporated into domestic law serve mainly to inform the contextual approach to statutory interpretation. The federal government itself puts great stock in its policy and consultation approach to the *Convention on the Rights of the Child*, but has shown itself unable to communicate a clear and unambiguous message about how precisely Canada is in compliance if the explicit language of the Convention is only occasionally found replicated in Canadian law.

All levels of government across Canada have a responsibility, and the capacity, to protect children's rights. Certainly there is widespread recognition across government of the importance of children – throughout its hearings the Committee was overwhelmed by expressions of concern and care for children's rights in each jurisdiction. It is simply a question of how effectively governments are accomplishing this task. Canada's courts have begun to move towards referring to the Convention in a variety of areas of the law – from immigration to child protection issues.¹²⁸ But what is needed to push both the issue

¹²⁸ Chamberland, International Bureau for Children's Right Conference. In *R. v. Sharpe*, [2001] 1 S.C.R. 45, the Supreme Court noted Canada's commitment to protecting children, as demonstrated by its ratification of the *Convention on the Rights of the Child*, the Convention's nearly universal membership, and other measures designed to protect children's rights in Canadian law; in *D.B.S. v. S.R.G.*, [2005] ABCA 2, the Alberta Court of Appeal ruled that the Federal Child Support Guidelines must be made consistent with the Convention; in *Quebec (Minister of Justice) v. Canada (Minister of Justice)* (2003), 228 D.L.R. (4th) 63, the Quebec Court of Appeal stated that the Convention could be used as an interpretive tool; in *U.C. v. Alberta (Director of Welfare)* (2003), 223 D.L.R. (4th) 662, the Alberta Court of Appeal relied on the Convention to give weight to the best interests of the child and to give due weight to the informed opinion of a child; in *L.D. c. A.P.*, [2000] J.Q. No. 5221, the Quebec Court of Appeal held that although the Convention has not been incorporated into domestic law, the court may still use the values expressed in it to interpret the law; even in *Canadian Foundation for Children, Youth, and the Law v. Canada (A.G.)*, although the Supreme Court ultimately upheld section 43 of the *Criminal Code*, exempting the use of reasonable force by way of correction from criminal sanctions, the court relied on the Convention to determine the meaning and scope of "best interests of the child."

and respect for the democratic process further is enhanced accountability, increased parliamentary and public input, and a more open approach to compliance that promotes transparency and enhanced political will. Right now it seems that political will often gets lost in the complexity of coordination and cooperation between jurisdictions. Kathy Vandergrift emphasized this point, stating that “sometimes the best interests of children get lost in those contests between federal and provincial governments.”¹²⁹

Yet, despite Canada’s federal system, our Committee believes that jurisdictional complexities are manageable. In support of this view, Suzanne Williams noted that,

[w]hile [the jurisdictional issue] is a real challenge, it can also be a real opportunity. We have several jurisdictions that are acting to improve the lives of children, and we can learn from one another and share resources. A real strength that we have is the diversity in this country. Jurisdictional challenges should not be considered a barrier that cannot be overcome.¹³⁰

This can be done by creating tangible mechanisms to ensure the implementation in Canada of the rights contained in the Convention, and to ensure enhanced government and Parliamentary accountability to children and all citizens. As stated by Suzanne Williams, “[g]iven Canada’s diversity, not only across jurisdictions but also with legal systems, and the multicultural makeup of Canada, there is a real need for effective coordination of children rights.”¹³¹ Through this study, our Committee looked for ways to handle the framework for implementation of children’s rights in Canada more effectively so as to breathe life into the Convention and foster an environment that supports the strong protection of children’s rights.

The suggestions that were put before the Committee include: a form of enabling legislation; the establishment of monitoring bodies at the federal level to oversee the protection of children’s rights; a more disciplined and structured process for both ratification and incorporation of international law; a simplified and more transparent reporting process; wide dissemination of the UN Committee’s Concluding Observations; enhanced consciousness-raising concerning the rights enshrined in the Convention;

¹²⁹ Vandergrift testimony, 14 February 2005.

¹³⁰ Williams testimony.

¹³¹ *Ibid.*

capacity-building in the voluntary sector; and most importantly, ensuring the involvement of children throughout these processes. Our Committee is also particularly concerned with finding an effective role for Parliament in fostering an environment that is more conducive to the real protection of children's rights in Canada. The various mechanisms and recommendations put forward will be discussed further in Chapters 17 and 18.

F. THE FOLLOWING CHAPTERS

In order to come to a better appreciation of the need for those recommendations, the Committee undertook an analysis of the application of specific articles of the Convention on the Rights of the Child to assess the impact of the Convention on children's daily lives in Canada – chapters 5 to 16 of this report delve into these specifics of children's rights. This discussion was not intended to be a full study of each issue. Not every article of the Convention on the Rights of the Child is discussed, and some articles are dealt with in more depth than others. Witnesses in a particular area may have been more aware of the rights outlined in the Convention and used the international instrument to help frame the public policy debate, while other rights remained unrepresented. For example, our Committee notes that it received very little information from a gender perspective with specific respect to the girl child. The following chapters are our Committee's review of implementation and use of the Convention in Canada, rather than an attempt to conduct an exhaustive study of the various issue affecting children.

These chapters are premised on the view that “[t]he rights of the child are interdependent”¹³² and overlapping – it is important not to view them in isolation. Article 3, setting out the principle of the best interests of the child, is a concept woven throughout discussion of these themes. That principle is a cornerstone of this report and the Committee's study.

In making its observations and suggestions, the Committee also kept in mind that the *Convention on the Rights of the Child* is based on the concept of the progressive realization of rights. As noted by Kathy Vandergrift, the Convention does not require

¹³² Jennifer Lamborn, Research and Policy Support, Native Women's Association of Canada, testimony before the Committee, 29 May 2006.

States Parties to fulfil all their obligations at once. However, States Parties should be seen to be moving forward on major indicators.

The chapters that follow highlight the Committee's observations with respect to implementation and use of the Convention in terms of issues of participation and expression, violence against children, exploitation of children, youth criminal justice, child welfare, adoption and identity issues, migrant children, health issues, early childhood development and care, child poverty, sexual minority children, and Aboriginal children. Keeping in mind that Canada's international legal obligations do not leave room for jurisdictional differences to justify diminished respect for human rights, our Committee's observations are accompanied by suggestions and recommendations as to how the federal, provincial, and territorial governments can all move forward to ensure the protection of children's rights in Canada.

Chapter 5 - Articles 12 to 15: Participation and Expression

A. INTRODUCTION

A number of articles in the *Convention on the Rights of the Child* deal with the child's right to participation and freedom of expression. As cited in Chapter 3, article 12 represents the child's basic right to express his or her views and the opportunity to be heard in proceedings affecting him or her, in accordance with the child's age and maturity. A report issued by the Bernard van Leer Foundation notes that article 12 is not only a "substantive right which entitles children to be actors in their own lives, not merely passive recipients of adult care and protection,"¹³³ but is also a "procedural right through which to realise other rights, achieve justice, influence outcomes and expose abuses of power."¹³⁴

Article 13 of the Convention complements article 12, emphasizing freedom of expression:

Art. 13(1) The child shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of the child's choice.

(2) The exercise of this right may be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:

(a) For respect of the rights or reputations of others; or

(b) For the protection of national security or of public order (ordre public), or of public health or morals.

Articles 14 and 15 focus on specific forms of expression – the child's freedom of thought, conscience and religion, and freedom of association.

¹³³ Gerison Lansdown, *Can You Hear Me? The Right of Young Children to Participate in Decisions Affecting Them*, Working Papers in Early Childhood Development No. 36, Bernard van Leer Foundation, The Hague, May 2005, p. 1, available at: www.bernardvanleer.org/publication_store/publication_store_publications/Can_you_hear_me_The_right_of_young_children_to_participate_in_decisions_affecting_them/file

¹³⁴ *Ibid.*

Art. 14(1) States Parties shall respect the right of the child to freedom of thought, conscience and religion.

(2) States Parties shall respect the rights and duties of the parents and, when applicable, legal guardians, to provide direction to the child in the exercise of his or her right in a manner consistent with the evolving capacities of the child.

(3) Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health or morals, or the fundamental rights and freedoms of others.

Art. 15(1) States Parties recognize the rights of the child to freedom of association and to freedom of peaceful assembly.

(2) No restrictions may be placed on the exercise of these rights other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order (*ordre public*), the protection of public health or morals or the protection of the rights and freedoms of others.

B. THE RIGHT OF CANADIAN CHILDREN TO PARTICIPATE AND TO BE HEARD

The convention states that children have the right to their own opinions, but we are never encouraged to speak. If we do voice our opinions, chances are that our opinions will be discussed by policymakers who are unwilling to listen... If you walk away with anything at all today, please walk away realizing that youth know what they want to see and know what they need to make a difference. It is a matter of implementation from others that trust that we know what we are doing.¹³⁵

When you do talk about it and when you do have these debates, your thoughts and your views are taken into account in school. It does not go beyond that. There is no way outside of school to show your opinion on any type of deal, like politics or anything. There is no place for you to say what you think about this, especially since you do not vote until you are 18.¹³⁶

The child's right to participate and to be heard is an important political right – it is one of the most fundamental principles underlying the *Convention on the Rights of the Child*. Our Committee heard over and over again how children and youth feel that they

¹³⁵ Hawa Mire, GoGirls, FREDA Centre for Research on Violence against Women, testimony before the Committee, 21 September 2006.

¹³⁶ Katie Cook, testimony before the Committee, 14 June 2005.

are not consulted or that their views are discounted, often on matters that have a significant impact on their lives. Articles 12 to 15 of the Convention stipulate that in the appropriate circumstances, the child has a right to be heard in matters that affect his or her well-being.

However, even beyond the individual's ability to participate in his or her own life, the Convention emphasizes that youth have a right to participate or to be consulted on broader issues and decisions that have an impact on their lives. Not only is this a right, but it is also an important part of effective decision- and policy-making. As noted in the Bernard van Leer report, society has to recognize that children are experts in their own lives, and often have valuable insights that can improve the implementation of a wide variety of policies and decisions. Lisa Wolff of UNICEF Canada told us that “[w]hen we listen to the children, we learn different things and our policy is different because of their comments.”¹³⁷ Nana, a young person who appeared before our Committee in Toronto emphasized this position, stating that it must be recognized that children “have a really big power and a voice to not only say how it feels, but also what it takes to change it.”¹³⁸ Our Committee strongly believes that children should be consulted on all significant issues affecting their rights and lives.

Moreover, such consultation needs to be meaningful. The Committee on the Rights of the Child comments that:

[A]ppearing to “listen” to children is relatively unchallenging; giving due weight to their views requires real change. Listening to children should not be seen as an end in itself, but rather as a means by which States make their interactions with children and their actions on behalf of children ever more sensitive to the implementation of children's rights.¹³⁹

When consulted, children should be included as active participants in decision-making – it is crucial that the voices, and not only the choices, of children are heard. Adults must not interpret the needs and wishes of children, but listen to them directly. Judy Finlay,

¹³⁷ Lisa Wolff, Director, Advocacy and Education, UNICEF Canada, testimony before the Committee, 29 January 2007.

¹³⁸ Nana, testimony before the Committee, 29 January 2007.

¹³⁹ Committee on the Rights of the Child, *General Comment No. 5*, para. 12.

Ontario's Child Advocate emphasized that meaningful participation means: "don't speak about us without us."¹⁴⁰

Kay Tisdall of the University of Edinburgh and Wayne MacKay of the Dalhousie Faculty of Law argued against the tokenism that so often occurs when children are invited to participate in events. When children are invited to consultations or to conferences, their views have to be taken seriously and they should be given a role in the decision-making process. As stated by Céline Giroux, former Vice President of the Commission des droits de la personne et des droits de la jeunesse of Quebec :

[W]e will have to realize that it is not enough to speak on behalf of children and young people. We must also speak *with* them, help them to express their thoughts, educate them about their rights and allow them to influence the decisions that concern them.¹⁴¹

Meaningful participation can also only occur when the voices of youth are acted upon. As noted by Brent Parfitt of the Committee on the Rights of the Child,

[t]oo often what we see, I am sure, is tokenism: that a number of children, for instance, are invited to a national conference to present "the youth perspective." I do not believe that is meaningful youth participation.

Meaningful youth participation is where children have a say or some role in actual decision-making. That may seem a little strange, but it is possible, and there are many examples both at the community school level, and indeed at the governmental level, provincial and federal.¹⁴²

Hearing from youth and other witnesses made it clear to our Committee that youth participation can make decision-making significantly more effective. Certainly when it comes to some of the deeper concerns facing children today, it is imperative that we turn to children and youth for their perspectives and suggestions. Billie Schibler, Manitoba's Child Advocate, emphasized this point, telling us that in such situations

the answers must come from the children themselves. They must tell us what they need and what they want from us and we must listen...

¹⁴⁰ Judy Finlay, Ontario Child Advocate, testimony before the Committee, 29 January 2007.

¹⁴¹ Céline Giroux, Vice President of the Commission des droits de la personne et des droits de la jeunesse of Quebec, International Bureau for Children's Rights Conference, *Making Children's Rights Work: National and International Perspectives*, Montréal, 18 November 2004.

¹⁴² David Brent Parfitt, member of the UN Committee on the Rights of the Child, testimony before the Committee, 6 November 2006.

As professionals, if we do not have the answers, the only place... that I feel those answers lie is hearing the young people, going into the communities, meeting with them.¹⁴³

The former Minister of Social Development, Ken Dryden, echoed that view, stating that:

The way to get underneath this, so that we have a real drive and energy to do something for children, is to listen to children's voices, not mini-adult voices. Ask them to talk about their lives, each part of their lives. What does it feel like to do this? What are you most proud of? What bugs you?¹⁴⁴

Encouraging such participation as emphasized in the Convention is also an extremely valuable tool in fostering the development of a stronger generation of youth. Kay Tisdall noted that youth participation is a powerful tool in countering disillusionment. Wayne MacKay told us that participation brings out the best in youth – their participation more often than not creates a “a win-win situation because usually when you empower in those ways, they exceed your expectations.”¹⁴⁵ Kathy Vandergrift further emphasized this point:

We could unleash bundles of energy in this country for the common good if we were to use some of the same strategies that we use in international development by working with youth and young people and engaging them in development. That potential exists.¹⁴⁶

Ryan Stratton, a youth who spoke to our Committee in St. John's, Newfoundland, told us that:

If you provide youth with the opportunity, if you let them know that the opportunities are there, and you... get them excited, then you can get youth involved in anything because we want to get involved; we are looking for stuff to do. We are sick of sitting home saying this place is boring, I am going for a walk. We want something to do and if the opportunity comes up, we are really excited.¹⁴⁷

¹⁴³ Schibler testimony.

¹⁴⁴ The Honourable Ken Dryden, Minister of Social Development, testimony before the Committee, 26 September 2005.

¹⁴⁵ MacKay testimony.

¹⁴⁶ Vandergrift testimony, 23 October 2006.

¹⁴⁷ Ryan Stratton, testimony before the Committee, 13 June 2005.

As noted in the Bernard van Leer report, respecting the Convention by allowing a child to participate in decisions concerning his or her own life can have a significant effect on child development, permitting the child to acquire greater levels of competence. A report prepared for the Child Protection Unit of the Canadian International Development Agency commented that “[c]hildren’s capacities are developed most effectively through interaction: the process of learning generates development, and children grow in competence through participation.”¹⁴⁸ By allowing children to take greater responsibility in their lives, they also become less vulnerable.

It is now accepted that children who are active in decision-making, who learn from their own experience, as well as observing adults engaging in “causes” they believe in, contribute to making a change and are less prone to depression, hopelessness, and suicide.¹⁴⁹

A number of youth appearing before our Committee emphasized the importance of participation. Nathaniel Mayer-Heft, a student in Montréal, pointed out that children need to become involved at an early age in order to become more active participants in society later on in their lives. Even if they cannot vote, they should be encouraged to become more involved in the political process so that they can discover its relevance to their lives.

No, they should not be voting at age 12, but why not ask them for their opinions? Why not get students from the ages of 12 years to 17 years involved in politics. You know, to build interest, so that when they reach 18 years, they will vote. I think that involvement would increase the number of people who vote.¹⁵⁰

Rachel Gardiner, a student in St. John’s, told us that she thinks

people become more involved when they understand. If youth understood how different things in the political system affected them, then they would become more involved...[and] educate other youth as to how it affects

¹⁴⁸ Philip Cook, Natasha Blanchet-Cohen, and Stuart Hart, *Children as Partners: Child Participation Promoting Social Change*, International Institute for Child Rights and Development, 2004, p. 12, available at: [www.acdi-cida.gc.ca/INET/IMAGES.NSF/vLUIImages/Childprotection/\\$file/CAP_CIDA_reportENG.pdf](http://www.acdi-cida.gc.ca/INET/IMAGES.NSF/vLUIImages/Childprotection/$file/CAP_CIDA_reportENG.pdf)

¹⁴⁹ *Ibid.*, p. 10.

¹⁵⁰ Nathaniel Mayer-Heft, Beutel High School, testimony before the Committee, 6 November 2006.

youth as a whole so that everyone can get involved and everyone can make a difference.¹⁵¹

Joelle LaFargue, who appeared before our Committee in Fredericton, said that:

One thing I have noticed about kids my own age or younger, or sometimes even older, is that when you ask them their opinions, they shrug and say, “I don’t know.” I find this sad because I believe that everyone is entitled to have their own opinions and to be heard. Often, kids do not have opinions or they do not say that they have opinions because they feel that it does not matter because they are either not taken seriously, or when they do say their opinions, it does not change anything...

It would be interesting if politicians came... to classes to... talk about how the political process works, about what type of things people in politics do, and maybe even more committees like this one to ask for children’s opinions. That would make them feel like they are being listened to. They are being educated because that is the best way to take advantage and actually do things, if you have the knowledge you need to make the right decisions and say your opinions.¹⁵²

When these important Convention rights are disregarded, the voices of children tend to be “lost in the sauce,”¹⁵³ in the words of one youth who appeared before our Committee in Toronto. Currently the voices of children and youth are rarely heard in decision-making in government, in Parliament, and at the NGO and service provider level. Our Committee strongly believes that children and youth should be encouraged to become more involved in the political and policy-making processes. Ensuring that children’s voices are heard and taken into account in policy decisions across Canada will be a significant step towards imbuing the *Convention on the Rights of the Child* with meaning in the Canadian context.

RECOMMENDATION 1

Pursuant to articles 12 to 15 of the Convention on the Rights of the Child, the Committee recommends that the federal government dedicate resources towards ensuring that children’s input is given considerable weight when laws, policies and other decisions that have a significant impact on children’s lives are discussed or implemented at the federal level.

¹⁵¹ Rachel Gardiner, testimony before the Committee, 13 June 2005.

¹⁵² Joelle LaFargue, testimony before the Committee, 14 June 2005.

¹⁵³ Aisha, testimony before the Committee, 29 January 2007.

Chapter 6 - Articles 19, 28, 37, 38 and the Optional Protocol: Violence Against Children

A. INTRODUCTION

The *Convention on the Rights of the Child* is the first international human rights instrument to expressly address the protection of children from violence. A variety of its articles deal with this issue. Article 19 provides for a broad protection of children from abuse and neglect, holding that:

Art. 19(1) States Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child.

(2) Such protective measures should, as appropriate, include effective procedures for the establishment of social programmes to provide necessary support for the child and for those who have the care of the child, as well as for other forms of prevention and for identification, reporting, referral, investigation, treatment and follow-up of instances of child maltreatment described heretofore, and, as appropriate, for judicial involvement.

Article 28(2) deals with the issue of corporal punishment in schools:

Art. 28(2) States Parties shall take all appropriate measures to ensure that school discipline is administered in a manner consistent with the child's human dignity and in conformity with the present Convention.

Article 37 prohibits violence against children in the context of the justice system, prohibiting torture and the deprivation of liberty. This provision will be dealt with in more detail in Chapter 8.

Finally, article 38 and the *Optional Protocol on the Involvement of Children in Armed Conflicts* deal with the question of child soldiers:

Art. 38(1) States Parties undertake to respect and to ensure respect for rules of international humanitarian law applicable to them in armed conflicts which are relevant to the child.

(2) States Parties shall take all feasible measures to ensure that persons who have not attained the age of fifteen years do not take a direct part in hostilities.

(3) States Parties shall refrain from recruiting any person who has not attained the age of fifteen years into their armed forces. In recruiting among those persons who have attained the age of fifteen years but who have not attained the age of eighteen years, States Parties shall endeavour to give priority to those who are oldest.

(4) In accordance with their obligations under international humanitarian law to protect the civilian population in armed conflicts, States Parties shall take all feasible measures to ensure protection and care of children who are affected by an armed conflict.

In the context of violence against children, this chapter will examine the issues of corporal punishment of children at home and in the school environment, bullying, and the involvement of children in the Canadian Armed Forces.

B. ARTICLES 19 AND 28: CORPORAL PUNISHMENT

With regard to spanking, we say that society must eliminate violence but it is okay at home. That is not right.¹⁵⁴

I urge States to prohibit all forms of violence against children, in all settings, including corporal punishment...¹⁵⁵

Our Committee heard from numerous witnesses with respect to corporal punishment, an issue that has become a flashpoint for children's rights advocates because of the rights outlined in the *Convention on the Rights of the Child* and because of a recent Supreme Court of Canada decision, *Canadian Foundation for Children, Youth, and the Law v. Canada (A.G.)*.¹⁵⁶

The UN Committee on the Rights of the Child defines corporal punishment as:

¹⁵⁴ Dr. Nicolas Steinmetz, Executive Director of the Foundation of Social Paediatrics Promotion, testimony before the Committee, 6 November 2006.

¹⁵⁵ Paulo Sérgio Pinheiro, *Report of the Independent Expert for the United Nations Study on Violence Against Children*, A/61/299, 29 August 2006, para. 98, available at: www.violencestudy.org/IMG/pdf/English.pdf

¹⁵⁶ [2004] 1 S.R.C. 76.

any punishment in which physical force is used and intended to cause some degree of pain or discomfort, however light. Most involves hitting (“smacking”, “slapping”, “spanking”) children, with the hand or with an implement - a whip, stick, belt, shoe, wooden spoon, etc. But it can also involve, for example, kicking, shaking or throwing children, scratching, pinching, biting, pulling hair or boxing ears, forcing children to stay in uncomfortable positions, burning, scalding or forced ingestion (for example, washing children’s mouths out with soap or forcing them to swallow hot spices).¹⁵⁷

Yet, in January 2004, the Supreme Court upheld the constitutional validity of section 43 of Canada’s *Criminal Code*,¹⁵⁸ the “reasonable chastisement” defence, which allows for the correction of children by force:

s. 43 Every schoolteacher, parent or person standing in the place of a parent is justified in using force by way of correction toward a pupil or child, as the case may be, who is under his care, if the force does not exceed what is reasonable under the circumstances.

The court found that the *Criminal Code* provision violated neither the life, liberty and security of the person, nor the equality, or cruel and unusual punishment rights contained in the Charter. However, in upholding section 43, the court also narrowed the reasonable chastisement defence, specifying that physical discipline:¹⁵⁹

- May generally only be used by parents – although teachers may use physical discipline to remove a child from the classroom or to secure compliance;
- May only be used against children older than two and not yet teenagers;
- May not be used against children incapable of learning from it because of a disability or some other contextual factor;
- May only be applied if it is minor corrective force of a transitory or trifling nature;
- May not involve the use of objects or blows or slaps to the head (such actions are deemed unreasonable);

¹⁵⁷ Committee on the Rights of the Child, *General Comment No. 8: The right of the child to protection from corporal punishment and other cruel or degrading forms of punishment (arts. 19; 28, para. 2; and 37, inter alia)*, CRC/C/GC/8, 21 August 2006, para. 11.

¹⁵⁸ R.S.C. 1985, c. C-46.

¹⁵⁹ Wade Riordan Raaflaub, *The “Spanking” Law: Section 43 of the Criminal Code*, PRB 05-10, (Ottawa:Library of Parliament, 23 January 2006).

- Must be corrective and used to address actual behaviour, rather than as an expression of frustration or an abusive personality; and
- Must be intended to restrain or control, or to express symbolic disapproval.

The court stated that the gravity of the precipitating event is not relevant to use of the section 43 defence, and that courts will determine “reasonableness” based on an objective test with respect to the particular circumstances of the case.¹⁶⁰

Beyond the federal criminal law, it is important to note that the standard for foster care and the way that provincial Education Acts across Canada deal with physical discipline in the classroom vary from province to province.¹⁶¹ Alberta, Ontario and Manitoba have not explicitly prohibited corporal punishment in their Education Acts.¹⁶²

Citing the *Convention on the Rights of the Child*, a great number of witnesses, including representatives of the Committee on the Rights of the Child, appeared before our Committee to urge the federal government to repeal the *Criminal Code*’s section 43 defence. Marv Bernstein, Children’s Advocate for Saskatchewan, stated that “it is time for Canada to step up to the plate or risk significant embarrassment on the international stage.”¹⁶³ In its latest Concluding Observations with respect to Canada, the Committee on the Rights of the Child welcomed:

the efforts being made by the State party to discourage corporal punishment by promoting research on alternatives to corporal punishment of children, supporting studies on the incidence of abuse, promoting healthy parenting and improving understanding about child abuse and its consequences. However, the Committee is deeply concerned that the State party has not enacted legislation explicitly prohibiting all forms of corporal punishment and has taken no action to remove section 43 of the Criminal Code, which allows corporal punishment.

¹⁶⁰ *Ibid.*

¹⁶¹ Joan Durrant, Department of Family Social Sciences, University of Manitoba, testimony before the Committee, 18 September 2006.

¹⁶² However, corporal punishment is prohibited through policy by many school boards in Ontario and Manitoba. See Global Initiative to End All Corporal Punishment of Children, *Ending Legalised Violence Against Children: North America Special Report*, 2005, available at: www.endcorporalpunishment.org/pages/pdfs/Report-NorthAmerica.pdf

¹⁶³ Marv Bernstein, Children’s Advocate, Province of Saskatchewan, testimony before the Committee, 19 September 2006.

The Committee recommends that the State party adopt legislation to remove the existing authorization of the use of “reasonable force” in disciplining children and explicitly prohibit all forms of violence against children, however light, within the family, in schools and in other institutions where children may be placed.¹⁶⁴

Dr. Claire Crooks of the CAMH Centre for Prevention Science told our Committee that this is one area in which “there is a clear cut role for law to set the standard.”¹⁶⁵

In the words of one young person who appeared before our Committee in St. John’s, Newfoundland, corporal punishment is damaging and counter-productive:

Violence does not help at all because parents are supposed to help you make the right decisions. They are supposed to help you out. If you are afraid of your parents, if you are afraid that they will physically hurt you, you will not open up to them, you will not talk to them and you will not have a good relationship with them...

You will not trust them. You will not share with them because you will be afraid.¹⁶⁶

With reference to concern about the effect that a ban on corporal punishment might have on parents, the Commissioner for Human Rights at the Council of Europe stated that “[t]he purpose of criminalizing all corporal punishment is not, of course, to prosecute and punish more parents.”¹⁶⁷ Rather, such criminalization

satisfies human rights by giving children equal protection of their physical integrity and human dignity. It gives a clear message that hitting children is wrong – at least as wrong as hitting anyone else. Thus it provides a consistent basis for child protection and for public education promoting positive forms of discipline. As attitudes change, so the need for prosecution and for formal interventions into families to protect children will diminish.¹⁶⁸

¹⁶⁴ Committee on the Rights of the Child, *Concluding Observations*, para. 32-33.

¹⁶⁵ Dr. Claire Crooks, Associate Director, CAMH Centre for Prevention Science, testimony before the Committee, 14 February 2005.

¹⁶⁶ Stratton testimony.

¹⁶⁷ Council of Europe, Commissioner for Human Rights, “Children and Corporal Punishment: ‘The Right Not to be Hit, Also a Children’s Right,’” Issue Paper 2006/01, available at: <https://wcd.coe.int/ViewDoc.jsp?id=1008209&BackColorInternet=FEC65B&BackColorIntranet=FEC65B&BackColorLogged=FFC679>

¹⁶⁸ *Ibid.*

The Committee on the Rights of the Child stated in its General Comment that it expects states to prosecute parents rarely:

Children's dependent status and the unique intimacy of family relations demand that decisions to prosecute parents, or to formally intervene in the family in other ways, should be taken with very great care. Prosecuting parents is in most cases unlikely to be in their children's best interests. It is the Committee's view that prosecution and other formal interventions (for example, to remove the child or remove the perpetrator) should only proceed when they are regarded both as necessary to protect the child from significant harm and as being in the best interests of the affected child...

Advice and training for all those involved in child protection systems, including the police, prosecuting authorities and the courts, should underline this approach to enforcement of the law...

Where, despite prohibition and positive education and training programmes, cases of corporal punishment come to light outside the family home - in schools, other institutions and forms of alternative care, for example - prosecution may be a reasonable response...¹⁶⁹

Our Committee echoes this call for the repeal of section 43 of the *Criminal Code*.

Countries around the world are banning corporal punishment at home and in schools. By August 2006, the Committee on the Rights of the Child noted that more than 100 countries had prohibited corporal punishment against children in schools and in penal systems,¹⁷⁰ and by early 2007, 16 European countries had explicitly banned all corporal punishment of children in law and repealed any "reasonable chastisement" defences.¹⁷¹

Through its Concluding Observations and General Comment on corporal punishment, the UN Committee on the Rights of the Child consistently recommends that states prohibit all forms of corporal punishment, including physical discipline in the family. In order to facilitate reaching this goal, the Committee suggests that States Parties initiate national campaigns to raise awareness of the negative effects of corporal punishment and to encourage the development of positive, non-violent child-rearing and educational practices. In its General Comment, the Committee stated that:

¹⁶⁹ Committee on the Rights of the Child, *General Comment No. 8*, para. 41-43.

¹⁷⁰ *Ibid.*

¹⁷¹ These countries are Austria, Bulgaria, Croatia, Cyprus, Denmark, Finland, Germany, Hungary, Iceland, Greece, Latvia, the Netherlands, Norway, Romania, Sweden, and Ukraine.

Addressing the widespread acceptance or tolerance of corporal punishment of children and eliminating it, in the family, schools and other settings, is not only an obligation of States parties under the Convention. It is also a key strategy for reducing and preventing all forms of violence in societies...

In rejecting any justification of violence and humiliation as forms of punishment for children, the Committee is not in any sense rejecting the positive concept of discipline. The healthy development of children depends on parents and other adults for necessary guidance and direction, in line with children's evolving capacities, to assist their growth towards responsible life in society.

The Committee recognizes that parenting and caring for children, especially babies and young children, demand frequent physical actions and interventions to protect them. This is quite distinct from the deliberate and punitive use of force to cause some degree of pain, discomfort or humiliation. As adults, we know for ourselves the difference between a protective physical action and a punitive assault; it is no more difficult to make a distinction in relation to actions involving children.¹⁷²

In keeping with this position, regardless of whether section 43 is repealed, witnesses strongly emphasized the need for public and parental education, including awareness-raising about alternative disciplinary measures. As stated by Brent Parfitt, a member of the Committee on the Rights of the Child:

If Canada is not prepared to implement the recommendations, at least Canada should show some leadership in the area of proper parenting, an alternative to corporal punishment as far as discipline of children is concerned.

I think one area the Senate could support is parenting education, especially in the high school situation, where alternatives to corporal punishment are taught. Unfortunately, or maybe fortunately, most of us learn parenting skills from our parents, and that may be good or it may be bad.

If our parents exercised corporal punishment, in all likelihood, we may exercise the same form of disciplinary procedures. We should be taught, then, in school about alternatives to discipline, rather than the use of corporal punishment.¹⁷³

Jim Igliorte, Child and Youth Advocate for Newfoundland and Labrador, pointed out the need for a national education campaign about the harms of physical punishment, as well

¹⁷² Committee on the Rights of the Child, *General Comment No. 8*, para. 3, 13 and 14.

¹⁷³ Parfitt testimony.

as the merits of positive discipline by all adults in positions of authority over a child. Such a campaign could highlight the difference between physical interventions to protect children and deliberate punitive use of force to cause pain, discomfort, or humiliation.

The Commissioner for Human Rights at the Council of Europe has said that “[a]ny national strategy for the elimination of corporal punishment has to include... longer-term measures to influence social attitude and promote positive alternative methods of relating and communicating.”¹⁷⁴ Joan Durrant spoke to us of the need to see parenting less as a power and punitive relationship, and more as a teaching and guiding relationship. Expressing a similar perspective, Dr. Gilles Julien, a social paediatrician and the President of the Fondation pour la promotion de la pédiatrie sociale, told us that parents need to learn to give children clear rules and frameworks: “children need parameters, not spanking.”¹⁷⁵ Raising parents’ awareness and teaching them new kinds of relationship and communication strategies can lead to their deeper “visceral understanding”¹⁷⁶ of how to deal with discipline in the long term.

Certainly, there is broad consensus in the children’s rights community on this issue. More than 220 professional organizations have endorsed a Joint Statement on Physical Punishment of Children and Youth¹⁷⁷ arguing for more constructive approaches to discipline. The goal is not to penalize parents but to educate and support them.¹⁷⁸ Jaap Doek has stated that:

In my dream world, every new parent would pass a test in parenting skills, rather like a new driver having a licence to be allowed on the roads. Obviously that can never happen. But governments do have a big role to play in promoting the idea of parenting classes... The problem is that it’s the responsible adults who are most likely to go to parenting classes, but they’re also the ones who are least likely to be violent to their children. We need to find ways of targeting the unreceptive, of getting the parents most at risk of violent behaviour to parenting classes. But we need to do

¹⁷⁴ Commissioner for Human Rights, “Children and Corporal Punishment: ‘The Right Not to be Hit, Also a Children’s Right.’”

¹⁷⁵ Dr. Gilles Julien, Social Paediatrician and President, Fondation pour la promotion de la pédiatrie sociale, testimony before the Committee, 6 November 2006.

¹⁷⁶ Mackinnon testimony.

¹⁷⁷ Joan Durrant, R. Ensom, and the Coalition on Physical Punishment of Children and Youth, *Joint Statement on Physical Punishment of Children and Youth*, 2004, available at: www.cheo.on.ca/english/pdf/joint_statement_e.pdf

¹⁷⁸ Williams testimony.

this without stigmatising the parents who are considered to be the high-risk cases. This is the challenge.¹⁷⁹

And yet, witnesses said that such an education campaign should target not only parents. The Commissioner for Human Rights at the Council of Europe noted that clear policies should also be developed for teachers and preschool staff, for health care personnel, for social workers and for other relevant professionals with respect to their role in preventing corporal punishment, and in dealing with specific situations in which a child may be suffering from abuse.¹⁸⁰

Our Committee consequently notes from the outset that education should be a primary goal of any initiatives taken in this sphere. This is a position that was articulated by the Committee on the Rights of the Child, whose members told our Committee that public education is even more important than changing the law. **There is a clear need for further research into alternative methods of discipline, as well as the effects of corporal punishment on children. As well, the Committee believes that the federal government should launch education programs in the public sphere** to foster a societal movement against corporal punishment, creating a contextual framework from which individual families can draw support. As suggested in the United Nations' recently released seminal study on violence against children, which used the *Convention on the Rights of the Child* as a framework for its discussions and recommendations, gender-sensitive parental education programs should be developed to promote healthy parent-child relationships, orienting parents towards constructive and positive forms of discipline and approaches to child development, while also taking into account children's evolving capacities and the importance of respecting their views. Education is also necessary to ensure that parents do not fear the loss of the reasonable chastisement defence. Our Committee draws on the advice of the Committee on the Rights of the Child in its General Comment on corporal punishment:

Given the widespread traditional acceptance of corporal punishment, prohibition on its own will not achieve the necessary change in attitudes

¹⁷⁹ Bernard van Leer Foundation, *Early Childhood Matters*.

¹⁸⁰ Commissioner for Human Rights, "Children and Corporal Punishment: 'The Right Not to be Hit, Also a Children's Right.'"

and practice. Comprehensive awareness-raising of children's right to protection and of the laws that reflect this right is required...

In addition, States must ensure that positive, non-violent relationships and education are consistently promoted to parents, carers, teachers and all others who work with children and families. The Committee emphasizes that the Convention requires the elimination not only of corporal punishment but of all other cruel or degrading punishment of children. It is not for the Convention to prescribe in detail how parents should relate to or guide their children. But the Convention does provide a framework of principles to guide relationships both within the family, and between teachers, carers and others and children. Children's developmental needs must be respected. Children learn from what adults do, not only from what adults say. When the adults to whom a child most closely relates use violence and humiliation in their relationship with the child, they are demonstrating disrespect for human rights and teaching a potent and dangerous lesson that these are legitimate ways to seek to resolve conflict or change behaviour.¹⁸¹

With these observations in mind, the Committee would like to echo the words of Paulo Sérgio Pinheiro, the independent expert who piloted the UN Study on Violence Against Children:

A basic assumption of the Convention on the Rights of the Child, contained in its preamble, is that the family is the natural environment for the growth and well-being of all its members – and particularly children – thereby recognizing that the family has the greatest potential to protect children and provide for their physical and emotional safety. The privacy and autonomy of the family are valued in all societies and the right to a private and family life, a home and correspondence is guaranteed in international human rights instruments. Eliminating and responding to violence against children is perhaps most challenging in the context of the family, considered by most as the most “private” of private spheres. However, children's rights to life, survival, development, dignity and physical integrity do not stop at the door of the family home, nor do States' obligations to ensure these rights for children.¹⁸²

RECOMMENDATION 2

Pursuant to articles 19 and 28 of the *Convention on the Rights of the Child*, the Committee recommends that the federal government take steps towards the elimination of corporal punishment in Canada. Steps should include:

¹⁸¹ Committee on the Rights of the Child, *General Comment No. 8*, para. 45-46.

¹⁸² *Report of the Independent Expert for the United Nations Study on Violence Against Children*, para. 38.

- **The immediate launch of an extensive public and parental education campaign with respect to the negative effects of corporal punishment and the need to foster enhanced parent-child communication based on alternative forms of discipline; and**
- **Calling on the Department of Health to undertake research into alternative methods of discipline, as well as the effects of corporal punishment on children;**
- **Repeal of section 43 of the *Criminal Code* by April 2009; and**
- **Calling on the Department of Justice to undertake an analysis of whether existing common law defences – such as necessity and the *de minimis* defence – should be made expressly available to persons charged with assault against a child.**

C. ARTICLE 19: BULLYING

Bullying is another form of violence against children that was an important area of concern for advocates appearing before the Committee with respect to the rights of children and Canada's compliance with article 19 of the *Convention on the Rights of the Child*. Bullying can take a variety of forms. Most often one thinks of bullying as direct physical or verbal aggression against a child by his or her peers. Yet bullying can take on many other more subtle forms, such as sexually inappropriate behaviour, name calling, gossip, social exclusion, and other forms of emotional intimidation.

Faye Mishna of the University of Toronto provided our Committee with statistics on bullying in Canada. She told us that between 10% and 30% of Canadian children surveyed experience bullying at school at least some of the time, and that in a World Health Organization survey, Canadian youth were found to have a higher rate of victimization than the international average in a number of areas.¹⁸³

Professor Mishna also told us about gender differentials with respect to bullying. She said that boys are more likely to be bullied and victimized according to traditional stereotypes of bullying. However, while boys experience higher rates of direct and physical aggression, girls are more likely to experience indirect aggression, such as social

¹⁸³ Faye Mishna, Associate Professor, Faculty of Social Work, University of Toronto, testimony before the Committee, 29 January 2007; Candace Currie et al., eds., *Young People's Health in Context: Health Behaviour in School-Aged Children (HBSC) Study: International Report from the 2001/2002 Survey*, Health Policy for Children and Adolescents, No. 4, World Health Organization, 2004.

exclusion and gossip. It is important to take these differences into account in any study of the issue. Professor Mishna also pointed out that bullying is an issue of particular concern for groups of children that are already marginalized or vulnerable. Bullying is often motivated by intolerance for others based on perceived membership in a group, such as sexual orientation, socio-economic status, race, and disability.

A number of witnesses told our Committee about the changing nature of bullying in modern society. Professor Mishna noted that the Internet and other new electronic technology, such as cell phones and web cameras, have become the “schoolyard” for new forms of bullying that can include stalking, sexual solicitation, and pornography. The anonymity of the Internet makes this form of bullying particularly troubling. In a brief submitted to the Committee, Professor Mishna cited statistics noting that 46% of Canadian children and youth surveyed had experienced unwanted sexual advances and sexually inappropriate discussions in chat rooms, 43% were approached on the Internet by someone who wanted personal information from them, and 25% of Canadian children and youth who used the Internet received hateful emails.

Bullying often goes underreported, but can have severely negative consequences for children. Professor Mishna told our Committee that many children avoid seeking help from adults for fear of not having their concerns taken seriously – many adults may not perceive certain behaviour to be bullying or to be a serious issue that warrants attention. Children themselves may not recognize that they are being victimized, may fear retaliation, or may be ashamed of their victimization or blame themselves, thus further inhibiting reports of bullying. The result is that concerns about bullying are effectively silenced, and bullying itself becomes normalized in children’s lives. The ramifications of this are far-reaching, with negative repercussions on children’s academic and social well-being, psychological and emotional development, and physical health. Professor Mishna noted that those who bully and who are bullied often become involved with mental health, juvenile justice, special education and social services institutions in the longer term. A student who appeared before our Committee in Toronto emphasized the insidious effects of bullying, telling us that “the traumatic effect [of bullying] does have an impact on [children’s lives]. If they cannot take on the bully they’ll take on people

inside the family or those they feel are... not doing anything about it which causes this big chain which really needs to be broken.”¹⁸⁴

Witnesses expressed concern that Canada was not living up to its obligations under the *Convention on the Rights of the Child* with respect to this problem. In the World Health Organization’s young people’s health survey, Canada ranked 26th and 27th of 35 countries in terms of measures to deal with bullying and victimization. Many countries are developing national campaigns to address bullying, while Professor Mishna noted that Canada as yet has none. She told us about PREVNET (Promoting Relationships and Eliminating Violence Network), a new initiative of the Network of Centres of Excellence that are currently developing a national strategy to address child and youth bullying and victimization.

Witnesses noted that a number of solutions are possible. The UN Study on Violence Against Children recommended that states

[p]revent and reduce violence in schools through specific programmes which address the whole school environment including through encouraging the building of skills such as non-violent approaches to conflict resolution, implementing anti-bullying policies and promoting respect for all members of the school community.¹⁸⁵

Professor Mishna also emphasized the need for education of teachers and parents to teach them more about peer victimization and intervention strategies. Our Committee echoes these concerns, noting that **a national strategy is needed to combat bullying in Canada and to bring this country into fuller compliance with the Convention. Such a strategy should include a national education campaign to teach children, parents, and teachers about bullying, and to promote conflict resolution and effective intervention strategies.**

¹⁸⁴ Joel, testimony before the Committee, 29 January 2007.

¹⁸⁵ *Report of the Independent Expert for the United Nations Study on Violence Against Children*, para. 111.

RECOMMENDATION 3

Pursuant to article 19 of the *Convention on the Rights of the Child*, the Committee recommends that the federal government implement a national strategy to combat bullying in Canada, accompanied by a national education campaign in cooperation with provincial and territorial governments to teach children, parents, teachers, and others about bullying, and to promote conflict resolution and effective intervention strategies.

D. ARTICLE 38 AND THE OPTIONAL PROTOCOL: CHILDREN INVOLVED IN ARMED CONFLICTS

Canada ratified the *Optional Protocol on the Involvement of Children in Armed Conflicts* in July 2000, at the same time attaching an explanatory statement specifying that Canada allows voluntary recruitment at age 16 and describing the circumstances in which recruitment of those under age 18 may take place.¹⁸⁶ In effect, individuals under 18 must provide proof of age and the consent of a guardian, who must be fully informed and fully comprehend the rights of the child in this regard. Prospective recruits under 18 must also watch an instructional video and read brochures to ensure that he or she is fully informed of what recruitment entails. Sixteen year-olds are only permitted to apply for Military College or to enrol in the Reserves. Moreover, individuals under 18 may withdraw from the military at any time with no penalty. Canada's *National Defence Act* has also been amended to indicate that no individual under 18 years of age shall be sent into a theatre of hostilities.

A number of witnesses expressed frustration with the fact that Canada allows voluntary recruitment at a lower age than many other developed countries. They argued that Canada should not allow recruitment at the age of 16: the federal government should raise the age of recruitment to the Canadian Armed Forces and withdraw its explanatory statement to the Optional Protocol. The Canadian Coalition for the Rights of Children expressed concern that the military is increasingly targeting young people (ages 16-34) in its recruitment programs,¹⁸⁷ while Kathy Vandergrift pointed out that those under 18 still

¹⁸⁶ For more information, see Chapter 4, section B3.

¹⁸⁷ Canadian Coalition for the Rights of Children, document available at: www.crin.org/docs/Canada_OPAC_Report_CCRC.doc.

receive full military training even if they are not sent to a theatre of hostilities. Professors Schabas and Driedger pointed to the consequences of allowing children into the military, emphasizing the need to encourage youth to finish their high school education rather than joining the military too young.

In its Concluding Observations with respect to the Optional Protocol, the Committee on the Rights of the Child echoed some of these concerns, reprimanding Canada for not giving priority to older candidates in the recruitment process.

The Committee notes with appreciation that section 20 (3) of the National Defence Act makes it mandatory to have the consent of one of the parents or the guardian of a person between 16 and 18 years before such person is enrolled in the Canadian Reserve or Regular Forces, in accordance with article 3 (b) of the Protocol. However, the Committee is concerned that, in light of article 38, paragraph 3, of the Convention, no measures have been taken to give priority in the recruitment process to those who are the oldest.

The Committee recommends that the State party give priority, in the process of voluntary recruitment, to those who are oldest and consider increasing the age of voluntary recruitment.

The Committee invites the State party to provide further information on the status of children attending the Royal Military College, particularly as to whether they are considered as just civilian students of a military college or already as military recruits.¹⁸⁸

Our Committee understands these concerns and strongly reiterates the opinion expressed by a number of witnesses: **in order to come into full compliance with the Convention on the Rights of the Child, Canada should withdraw its explanatory statement to the Optional Protocol – there should be no recruitment of individuals under 18 years of age into the military.** Not only does the Committee wish to underscore compliance with the Convention and the need to ensure that students remain in school, we also wish to point out that other options are available. While recognizing that, under the *National Defence Act*, children under the age of 18 are not sent into a theatre of hostilities, the Committee notes that such children recruited into the military

¹⁸⁸ Committee on the Rights of the Child, *Concluding Observations – Consideration of Reports Submitted by States Parties under Article 8 of the Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflicts*, CRC/C/OPAC/CAN/CO/1, 9 June 2006, para. 8-10.

still receive full military training. The Committee finds this situation unacceptable. As suggested by Kathy Vandergrift, other options include allowing those under 18 to participate in peace-building training and other activities that fall short of military training and teach youth valuable skills for later in their careers.

Echoing a recommendation of Kathy Vandergrift, the Committee also notes the lack of statistics on the number of 16- and 17-year-olds involved in the military. The Canadian Armed Forces currently keeps statistics on recruits aged 16 to 19, but does not break these data into specific years of age; the figures thus do not enable the federal government to keep track of its international obligations under the *Convention on the Rights of the Child* and the Optional Protocol. **While those under 18 years of age remain in the military, the Canadian Armed Forces should ensure that it compiles statistics on the number of 16- and 17-year-old recruits.**

Our Committee wishes to underscore the important role played by Canada in the international sphere as a leader for the protection of human rights and children's rights. By allowing the recruitment of children into the military, Canada is sending a message to the rest of the world that this is not an issue of primary importance, and that the lines can be effectively blurred between recruitment and military engagement. Our Committee finds this message to be unacceptable. When the lines are blurred, mistakes can happen. Only recently, the British government discovered that it had inadvertently sent 15 recruits who were under 18 to Iraq.¹⁸⁹ The Committee urges the federal government to fully comply with the *Convention on the Rights of the Child* in this regard, so that Canada may continue to stand as a leader in the international sphere.

¹⁸⁹ "British Government Says it 'Inadvertently' Sent 15 Child Soldiers to Iraq," *Canadian Press Wire*, 3 February 2007. The British government abides by the same rules as Canada with respect to parental consent for recruits who are under 18 and the prohibition on such recruits' being sent to a theatre of hostilities.

RECOMMENDATION 4

Pursuant to article 38 of the *Convention on the Rights of the Child* and the *Optional Protocol on the Involvement of Children in Armed Conflicts*, the Committee recommends that the Canadian Forces:

- **Develop a database to track statistics with respect to the recruitment and involvement of those under the age of 18 in the Canadian Forces;**
- **Make its recruitment policies with respect to those under 18 years of age openly available to the public;**
- **Review and assess recruitment practices to ensure full compliance with the Convention, including ensuring that priority in the recruitment process is given to those who are 18 years of age or older; and**
- **Report back to this Committee in July 2009 in order to review recruitment policies and compliance with the Convention.**

RECOMMENDATION 5

The Committee recommends that the federal government respond to the UN Study on Violence Against Children, and that it inform the international community, Parliament, and the Canadian public how it is responding to issues of violence against children and how it intends to improve upon policies to bring Canada into compliance with the *Convention on the Rights of the Child*.

Chapter 7 - Articles 19, 32, 34 to 36 and the Optional Protocol: Exploitation of Children

A. INTRODUCTION

Exploitation is a broad term that covers many violations of children's rights. For example, article 19 of the *Convention on the Rights of the Child*, mentioned in the previous chapter, deals with the issue of violence and exploitation. Article 36 deals with exploitation in a more general sense.

Art. 36 States Parties shall protect the child against all other forms of exploitation prejudicial to any aspects of the child's welfare.

This chapter will focus on the issues of sexual and economic exploitation, two areas of particular concern to witnesses appearing before the Committee.

Article 32 of the Convention deals with economic exploitation and the issue of child labour:

Art. 32(1) States Parties recognize the right of the child to be protected from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral or social development.

(2) States Parties shall take legislative, administrative, social and educational measures to ensure the implementation of the present article. To this end, and having regard to the relevant provisions of other international instruments, States Parties shall in particular:

- (a) Provide for a minimum age or minimum ages for admission to employment;
- (b) Provide for appropriate regulation of the hours and conditions of employment;
- (c) Provide for appropriate penalties or other sanctions to ensure the effective enforcement of the present article.

This provision is complemented by the International Labour Organization *Convention No. 138 Concerning Minimum Age for Admission to Employment*, mentioned in Chapter 2, which generally sets the minimum age for employment at 15 years of age:

Art. 1 Each Member for which this Convention is in force undertakes to pursue a national policy designed to ensure the effective abolition of child labour and to raise progressively the minimum age for admission to employment or work to a level consistent with the fullest physical and mental development of young persons.

Art. 2(1) Each Member which ratifies this Convention shall specify, in a declaration appended to its ratification, a minimum age for admission to employment or work within its territory and on means of transport registered in its territory; subject to Articles 4 to 8 of this Convention, no one under that age shall be admitted to employment or work in any occupation.

(2) Each Member which has ratified this Convention may subsequently notify the Director-General of the International Labour Office, by further declarations, that it specifies a minimum age higher than that previously specified.

(3) The minimum age specified in pursuance of paragraph 1 of this Article shall not be less than the age of completion of compulsory schooling and, in any case, shall not be less than 15 years.

Articles 34 and 35 of the Convention deal with the issues of sexual exploitation and trafficking in children (although the question of trafficking will be dealt with more fully in Chapter 11).

Art. 34 States Parties undertake to protect the child from all forms of sexual exploitation and sexual abuse. For these purposes, States Parties shall in particular take all appropriate national, bilateral and multilateral measures to prevent:

(a) The inducement or coercion of a child to engage in any unlawful sexual activity;

(b) The exploitative use of children in prostitution or other unlawful sexual practices;

(c) The exploitative use of children in pornographic performances and materials.

Art. 35 States Parties shall take all appropriate national, bilateral and multilateral measures to prevent the abduction of, the sale of or traffic in children for any purpose or in any form.

All of the above provisions are complemented by the *Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography*, which extends the protections guaranteed to children in Convention articles dealing with the illicit transfer and non-return of children abroad, adoption, and economic exploitation and trafficking in children.

B. ARTICLES 34 TO 36 AND THE OPTIONAL PROTOCOL: SEXUAL EXPLOITATION

While witnesses did not provide our Committee with significant amounts of evidence on the use of the *Convention on the Rights of the Child* with respect to the sexual exploitation of children, we nonetheless recognize that this is an important issue. Child pornography, sexual exploitation over the Internet, the commercial sexual exploitation of children, and sexual abuse are themes that arose frequently in our hearings, although seldom in great depth. The Committee on the Rights of the Child devoted attention to the issue in its latest Concluding Observations:

The Committee is encouraged by the role Canada has played nationally and internationally in promoting awareness of sexual exploitation and working towards its reduction, including by adopting amendments to the Criminal Code in 1997 (Bill C-27) and the introduction in 2002 of Bill C-15A, facilitating the apprehension and prosecution of persons seeking the services of child victims of sexual exploitation and allowing for the prosecution in Canada of all acts of child sexual exploitation committed by Canadians abroad. The Committee notes, however, concerns relating to the vulnerability of street children and, in particular, Aboriginal children who, in disproportionate numbers, end up in the sex trade as a means of survival. The Committee is also concerned about the increase of foreign children and women trafficked into Canada.

The Committee recommends that the State party further increase the protection and assistance provided to victims of sexual exploitation and trafficking, including prevention measures, social reintegration, access to health care and psychological assistance, in a culturally appropriate and

coordinated manner, including by enhancing cooperation with non-governmental organizations and the countries of origin.¹⁹⁰

The final report of the UN Study on Violence Against Children¹⁹¹ emphasized the issue of sexual exploitation and its consequences, noting that children who have been sexually abused are more likely to run away, which exposes them to the risk of further sexual exploitation on the street. The recently released report of the Subcommittee on Solicitation Laws of the House of Commons Standing Committee on Justice and Human Rights notes that the first experience of many individuals involved in prostitution is between the ages of 14 and 18.¹⁹²

The Internet and new electronic technologies are also an issue of significant concern. The numbers provided by Faye Mishna of the University of Toronto in the previous chapter are particularly revealing. Not only does the Internet facilitate the distribution of child pornography, Professor Mishna noted that 46% of Canadian children and youth surveyed had experienced unwanted sexual advances and sexually inappropriate discussions in chat rooms. Initiatives to tackle sexual exploitation that takes place over the Internet and by means of cell phones are of great concern to this Committee, as we note that such technologies are increasingly available to young people and that the implementation of limits and restrictions is difficult.

The UN's Study on Violence Against Children also highlighted the disproportionate impact of sexual exploitation on girls. Echoing information provided by Marilyn Hedlund of the Government of Saskatchewan's Child and Family Services Division and Angela Cameron of the FREDA Centre for Research on Violence against Women and Children, the UN report notes that the majority of commercially sexually exploited and sexually exploited children, as well as those who are exposed to sexual violence, are female. Sudabeh Mashkuri of the Metro Action Committee on Violence Against Women and Children provided statistics in a brief submitted to our Committee, noting that girls in

¹⁹⁰ Committee on the Rights of the Child, *Concluding Observations*, para. 52-53.

¹⁹¹ Paulo Sérgio Pinheiro, *World Report on Violence Against Children*, 2006, available at: www.violencestudy.org/r25

¹⁹² Subcommittee on Solicitation Laws of the House of Commons Standing Committee on Justice and Human Rights, *The Challenge of Change: A Study of Canada's Criminal Prostitution Laws*, December 2006, p. 10, available at: <http://cmte.parl.gc.ca/Content/HOC/committee/391/just/reports/rp2599932/justrp06/sslrp06-e.pdf>

Canada generally experience higher rates of sexual and physical assault by family members than boys, and are four times more likely to be sexually mistreated. Girls have been found to be the victims in 8 out of 10 family-related sexual assaults committed against children and youth.¹⁹³

The *Convention on the Rights of the Child* devotes a number of articles as well as an Optional Protocol to the issue of sexual exploitation. This is clearly an issue of serious concern, and our Committee believes that further action should be taken to enhance the protection of children from sexual exploitation in Canada. Firstly, **our Committee wishes to recognize the federal government's National Strategy to Protect Children from Sexual Exploitation on the Internet**, which seeks to: increase law enforcement capacity in this area; provide public reporting and education to prevent victimization; and develop partnerships with the e-learning industry, the private sector and other levels of government to foster effective public awareness, education and crime prevention strategies. Within this strategy, the Committee notes the good work of Cybertip.ca, a child sexual abuse tipline that was launched nationally in January 2005. In line with this strategy, and with comments and observations on prostitution made by the Subcommittee on Solicitation Laws of the House of Commons Standing Committee on Justice and Human Rights, **the Committee calls for the federal government to develop a national strategy to specifically combat the commercial sexual exploitation of children.**

RECOMMENDATION 6

Pursuant to articles 34 to 36 of the *Convention on the Rights of the Child* and the *Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography*, the Committee recommends that the federal government develop and implement a strategy to combat the commercial sexual exploitation of children that will address:

- **The predators who create the demand for the commercial sexual exploitation of children;**
- **Businesses and networks based on the commercial sexual exploitation of children;**
- **New technologies and their impact on child pornography and the commercial sexual exploitation of children;**

¹⁹³ See also Lucie Ogrodnik ed., *Family Violence in Canada: A Statistical Profile 2006*, Statistics Canada, Canadian Centre for Justice Statistics, July 2006.

- **Problem areas in terms of the involvement of children in the fashion industry, in marketing, in the media, and in the travel and tourism industry.**

C. ARTICLES 32 AND 36: ECONOMIC EXPLOITATION

As already noted, Canada has yet to ratify one of two fundamental conventions on child labour – *Convention No. 138 Concerning Minimum Age for Admission to Employment*. Despite the fact that Canada remains broadly respectful of the principles enumerated in that Convention, witnesses from the International Labour Office and the Canadian Labour Congress commented that this inability to ratify the Convention has meant that Canada is becoming “badly branded”¹⁹⁴ among the 147 other States Parties.

The Committee on the Rights of the Child reinforced this criticism in its Concluding Observations:

The Committee greatly appreciates the fact that Canada has committed resources to work towards the ending of economic exploitation of children on the international level. However, the Committee regrets the lack of information in the State party report relating to the situation in Canada. Furthermore, it is concerned that Canada has not ratified International Labour Organization Convention No. 138 concerning the Minimum Age for Admission to Employment and is concerned at the involvement of children under 13 years old in economic activity.

The Committee recommends that the State party ratify International Labour Organization Convention No. 138 concerning the Minimum Age for Admission to Employment and take the necessary measures for its effective implementation. The Committee further encourages the State party to conduct nationwide research to fully assess the extent to which children work, in order to take, when necessary, effective measures to prevent the exploitative employment of children in Canada.¹⁹⁵

The federal government is unable to ratify the Convention because each province has jurisdiction to set its own minimum age for admission to employment. Currently a number of provinces are in violation of Convention No. 138’s age limit. For example, Alberta’s minimum age for employment is 12 (before being admitted to employment, the child must have permission from his or her parents and the Director of Employment

¹⁹⁴ Stewart and Roselaars testimony.

¹⁹⁵ Committee on the Rights of the Child, *Concluding Observations*, para. 50-51.

Standards).¹⁹⁶ A number of provinces are unwilling to interfere with children's participation in work on family farms.

Using Canada's legal obligations under both the *Convention on the Rights of the Child* and Convention No. 138 as a framework for her argument, Barbara Byers of the Canadian Labour Congress expressed concern about children involved in the labour force – not because children should never be allowed to take on any form of employment before the age of 15, but because of problems with respect to schooling, physical injury and exploitation. She expressed concern about children who must miss school to work and about the number of accidents on farms and in other workplaces involving children. In an article in *Law Now*, Linda McKay-Panos referred to a Statistics Canada report indicating that youth who work more than 30 hours per week are 2.4 times more likely to drop out of school before graduation. The same article notes that between 2000 and 2004, 12 workers between the ages of 12 and 19 were killed on the job in Alberta. She cited an Alberta government report which found that younger workers (those between 15 and 24) were more likely to be injured on the job than older workers because they lacked the skills necessary to operate equipment. A 2005 survey of students in British Columbia also found that one-fifth of students reported injuring themselves on the job.¹⁹⁷

Barbara Byers told our Committee that one serious problem with children involved in the workforce is the fact that children are seldom fully aware of employment laws and regulations, or their rights, and are unable to identify when an employer is acting fairly. For example, young workers may not know when they are entitled to breaks or when they must be paid. They may not know of their right to be free from sexual harassment. Ms. Byers pointed out that some young workers are even blamed for accidents that occur at work, and if they stand up for their rights, they may be fired.

The Committee is aware that the federal government does not have jurisdiction to request individual provinces to change their minimum age of employment laws. However, in order to ensure the protection of children's rights in Canada, **the federal**

¹⁹⁶ Children under 15 are permitted to work two hours on a school day and eight on other days.

¹⁹⁷ Linda McKay-Panos, "Child Labour: Just an International Issue?" *Law Now*, Vol. 31(1), September/October 2006, p. 63.

government should enter into intensive dialogue with the provinces and territories to discuss the issue of child employment. Such discussions could delve into the rationale behind *Convention No. 138 Concerning Minimum Age for Admission to Employment* and the reasons why some provinces need lower ages for youth employment. Issues raised should also highlight concerns with respect to schooling, workplace injuries, and employment standards. As also noted by Barbara Byers and officials from the International Labour Office, our Committee is not interested in preventing children from working on family farms or as babysitters. There is considerable merit to children having some work experience. We do, however, have some serious concerns about working conditions and the need for children to have an opportunity to graduate from high school before becoming fully involved in the workforce. A focus on children's rights and best interests should underscore all initiatives undertaken in this area.

RECOMMENDATION 7

Pursuant to articles 32 and 36 of the *Convention on the Rights of the Child*, the Committee recommends that the federal, provincial and territorial governments, as well as parents, ensure that safe conditions exist for children who do work, and that such children are informed of their rights and encouraged to remain in school.

Chapter 8 - Articles 37 and 40: Children in Conflict with the Law

A. INTRODUCTION

Youth justice and the detention of minors are ongoing issues of concern in Canada and around the world. Governments in developed countries are struggling with new legislative initiatives to tackle youth crime and to provide rehabilitative solutions.

The *Convention on the Rights of the Child* deals with children in conflict with the law in articles 37 and 40. Article 37 holds that:

Art. 37 States Parties shall ensure that:

(a) No child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment. Neither capital punishment nor life imprisonment without possibility of release shall be imposed for offences committed by persons below eighteen years of age;

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

(c) Every child deprived of liberty shall be treated with humanity and respect for the inherent dignity of the human person, and in a manner which takes into account the needs of persons of his or her age. In particular, every child deprived of liberty shall be separated from adults unless it is considered in the child's best interest not to do so and shall have the right to maintain contact with his or her family through correspondence and visits, save in exceptional circumstances;

(d) Every child deprived of his or her liberty shall have the right to prompt access to legal and other appropriate assistance, as well as the right to challenge the legality of the deprivation of his or her liberty before a court or other competent, independent and impartial authority, and to a prompt decision on any such action.

This provision seeks to ensure that no child shall be arbitrarily or unlawfully deprived of his or her liberty, and that a child in detention has the right to prompt access to legal and other assistance, as well as the right to challenge the legality of that detention.

Article 37 emphasizes that states should use deprivation of liberty only as a last resort and for the shortest period of time when sentencing children. A child must never be sentenced to the death penalty or to life in prison without possibility of release or parole. Finally, article 37 requires that children in detention not be housed with adults unless it is considered in the child's best interests to do so. However, as noted in Chapter 4, Canada has entered a reservation to article 37(c) stating that:

The Government of Canada accepts the general principles of article 37(c) of the Convention, but reserves the right not to detain children separately from adults where this is not appropriate or feasible.

Witnesses told us that the government adopted this reservation to provide some leeway for remote northern communities in Canada, to avoid the situation in which a child who turns 18 during his or her term of incarceration must suddenly be moved into an adult facility, and to respond to concerns about incarcerating young children with more dangerous youth offenders.

Article 40 of the Convention encourages States Parties to use alternative sentencing and to avoid detention of minors unless rehabilitation cannot be achieved through a non-custodial sentence. It also lists the rights and guarantees necessary to ensure a fair trial for children, and calls for a minimum age below which children shall be presumed not to have the capacity to infringe the criminal law.

Art. 40(1) States Parties recognize the right of every child alleged as, accused of, or recognized as having infringed the penal law to be treated in a manner consistent with the promotion of the child's sense of dignity and worth, which reinforces the child's respect for the human rights and fundamental freedoms of others and which takes into account the child's age and the desirability of promoting the child's reintegration and the child's assuming a constructive role in society.

(2) To this end, and having regard to the relevant provisions of international instruments, States Parties shall, in particular, ensure that:

(a) No child shall be alleged as, be accused of, or recognized as having infringed the penal law by reason of acts or omissions that were not prohibited by national or international law at the time they were committed;

(b) Every child alleged as or accused of having infringed the penal law has at least the following guarantees:

(i) To be presumed innocent until proven guilty according to law;

(ii) To be informed promptly and directly of the charges against him or her, and, if appropriate, through his or her parents or legal guardians, and to have legal or other appropriate assistance in the preparation and presentation of his or her defence;

(iii) To have the matter determined without delay by a competent, independent and impartial authority or judicial body in a fair hearing according to law, in the presence of legal or other appropriate assistance and, unless it is considered not to be in the best interest of the child, in particular, taking into account his or her age or situation, his or her parents or legal guardians;

(iv) Not to be compelled to give testimony or to confess guilt; to examine or have examined adverse witnesses and to obtain the participation and examination of witnesses on his or her behalf under conditions of equality;

(v) If considered to have infringed the penal law, to have this decision and any measures imposed in consequence thereof reviewed by a higher competent, independent and impartial authority or judicial body according to law;

(vi) To have the free assistance of an interpreter if the child cannot understand or speak the language used;

(vii) To have his or her privacy fully respected at all stages of the proceedings.

(3) States Parties shall seek to promote the establishment of laws, procedures, authorities and institutions specifically applicable to children alleged as, accused of, or recognized as having infringed the penal law, and, in particular:

(a) The establishment of a minimum age below which children shall be presumed not to have the capacity to infringe the penal law;

(b) Whenever appropriate and desirable, measures for dealing with such children without resorting to judicial proceedings, providing that human rights and legal safeguards are fully respected.

(4) A variety of dispositions, such as care, guidance and supervision orders; counselling; probation; foster care; education and vocational training programmes and other alternatives to institutional care shall be available to ensure that children are dealt with in a manner appropriate to

their well-being and proportionate both to their circumstances and the offence.

Ultimately, the *Convention on the Rights of the Child* requires States Parties to develop and implement a comprehensive juvenile justice policy, and encourages states to establish a child-centred, specialized justice system, the overarching aim of which is children's social reintegration. The juvenile justice policy should deal with prevention of juvenile delinquency; interventions without resorting to judicial proceedings and interventions in the context of judicial proceedings; the minimum age of criminal responsibility and the upper age limits for juvenile justice; guarantees for a fair trial; and deprivation of liberty, including pre-trial detention and post-trial incarceration.¹⁹⁸

B. THE RATE OF YOUTH DETENTION IN CANADA

While the average Canadian might believe that there is no reason to worry about youth detention issues in Canada, our Committee has in fact heard some telling facts that make it clear that this is a matter of significant concern to advocates of children's rights. Witnesses informed us that the percentage of children in detention in Canada is higher than in most other democratic/industrial states, with a disproportionately high detention rate for ethnic minority and Aboriginal children.¹⁹⁹

The implementation of the *Youth Criminal Justice Act*²⁰⁰ in 2003 represented an attempt to lower youth custody rates. Replacing the former *Young Offenders Act*, this legislation seeks to ensure that a young person will not be sentenced to custody unless he or she has committed a serious violent offence; has not complied with non-custodial sentences; has committed an indictable offence for which an adult would be liable to imprisonment for more than two years, and has a history indicating a pattern of findings

¹⁹⁸ Committee on the Rights of the Child, *General Comment No. 10: Children's Rights in Juvenile Justice*, unedited version, CRC/C/GC/10, 2 February 2007; Florence Martin and John Parry-Williams, "The Right not to Lose Hope: Children in Conflict with the Law – A Policy Analysis and Examples of Good Practice," Save the Children, 2005, available at: www.rb.se/NR/rdonlyres/F6E94ABB-559E-40A4-8EEE-B258B8DB553A/0/TheRightnottoLoseHope.pdf

¹⁹⁹ William Schabas, Director, Irish Centre for Human Rights, National University of Ireland, testimony before the Committee, 21 March 2005. See also UNICEF Innocenti Research Centre, *Juvenile Justice, Innocenti Digest*, No. 3, January 1998, p. 13, available at: www.unicef-icdc.org/publications/pdf/digest3e.pdf

²⁰⁰ S.C. 2002, c. 1.

of guilt; or, in exceptional circumstances, where the young person has committed an indictable offence and a non-custodial sentence would be inconsistent with the purposes and principles of sentencing of the Act.

Since implementation of the Act the number of youth between 12 and 17 years of age in custody (whether secure, open, or remand) declined from 25,000 in 1999-2000 to 17,100 in 2003-2004. The incarceration rate (the average daily rate of young persons in custody per 10,000 youth in the population) stood at 8.8% in 2003, a 55% decrease since 1994-1995. The number of youth in secure custody is also on the decline, having decreased by 43% between 2002-2003 and 2003-2004. Finally, the number of girls in sentenced custody dropped from 16% to 13% of the total number of youth in sentenced custody between 1999-2000 and 2003-2004.²⁰¹

And yet, not all the statistics have been positive. The number of Aboriginal youth admitted to sentenced custody increased between 2002-2003 and 2003-2004 – from 22% to 28% for Aboriginal males, and from 28% to 35% for Aboriginal females, of the total number of youth sentenced to custody.²⁰² Not only is the higher number of Aboriginal females significant, but it should also be kept in mind that according to testimony before our Committee, Aboriginal youth make up only 5% of the total youth population in Canada. The number of Aboriginal youth in custody, and of Aboriginal female youth in particular, is disproportionately high.²⁰³ As well, despite improvements, the fact remains that Canada continues to have a higher rate of detention than most other developed countries, and as a result, it stands in clear violation of its obligations to children under the *Convention on the Rights of the Child*.

These numbers are higher in some provinces than in others. Our Committee sought out information on youth in conflict with the law in Saskatchewan because it had been brought to our attention that as of June 2004, Saskatchewan had the highest rate of cases brought before youth court in Canada and the highest rate of youth incarceration. Saskatchewan's rate of youth charged more than doubled that for the rest of Canada. A

²⁰¹ Donna Calverley, "Youth Custody and Community Services in Canada 2003/2004," *Juristat*, Canadian Centre for Justice Statistics, Cat. No. 85-002-XPE, Vol. 26(2), March 2006.

²⁰² *Ibid.*

²⁰³ Broader questions with respect to Aboriginal children are dealt with in more detail in Chapter 16.

study released by Statistics Canada in December 2005 also showed that while the number of young people in sentenced custody had decreased across Canada, that decline was lowest in Saskatchewan, at only -24%.²⁰⁴ Lawyer Kearney Healy told our Committee that 75-80% of children in custody in Saskatchewan have disabilities, and the Government of Saskatchewan informed us that 75% of children in custody are Aboriginal – this in a province where only 14% of the youth population is Aboriginal.²⁰⁵

Witnesses such as William Schabas of the Irish Centre for Human Rights expressed frustration with Canada's violation of the Convention due to its high rates of youth detention. In its Concluding Observations, the Committee on the Rights of the Child said that:

The Committee is encouraged by the enactment of new legislation in April 2003. The Committee welcomes crime prevention initiatives and alternatives to judicial procedures. However, the Committee is concerned at the expanded use of adult sentences for children as young as 14; that the number of youths in custody is among the highest in the industrialized world; that keeping juvenile and adult offenders together in detention facilities continues to be legal; that public access to juvenile records is permitted and that the identity of young offenders can be made public.

In addition, the public perceptions about youth crime are said to be inaccurate and based on media stereotypes.

The Committee recommends that the State party continue its efforts to establish a system of juvenile justice that fully integrates into its legislation, policies and practice the provisions and principles of the Convention, in particular articles 3, 37, 40 and 39, and other relevant international standards in this area, such as the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules), the United Nations Guidelines for the Prevention of Juvenile Delinquency (the Riyadh Guidelines), the United Nations Rules for the Protection of Juveniles Deprived of Their Liberty and the Vienna Guidelines for Action on Children in the Criminal Justice System. In particular, the Committee urges the State party:

(a) To ensure that no person under 18 is tried as an adult, irrespective of the circumstances or the gravity of his/her offence;

²⁰⁴ Statistics Canada, "Youth Correctional Services: Key Indicators," *The Daily*, 1 December 2005, available at: www.statcan.ca/Daily/English/051201/d051201a.htm

²⁰⁵ Government of Saskatchewan, "New Directions for Youth Services: The Saskatchewan Youth Services Model."

(b) To ensure that the views of the children concerned are adequately heard and respected in all court cases;

(c) To ensure that the privacy of all children in conflict with the law is fully protected in line with article 40, paragraph 2 (b) (vii) of the Convention;

(d) To take the necessary measures (e.g. non-custodial alternatives and conditional release) to reduce considerably the number of children in detention and ensure that detention is only used as a measure of last resort and for the shortest possible period of time, and that children are always separated from adults in detention.²⁰⁶

Kearney Healy told the Committee why he feels that the numbers are so high in Saskatchewan:

[W]e tend to use control rather than development as a response to young people in trouble... [M]any children are in extreme difficulty because of not knowing their parents, high rates of suicide, et cetera. They are marginalized in so many different ways and, rather than responding to those needs, we have simply controlled them.²⁰⁷

This inability to respond to the needs of youth in conflict with the law was forcefully reiterated by Bill Thibodeau of EGADZ, a Saskatoon youth centre:

I was at a meeting yesterday with a 17-year-old male who got into a pretty serious fight four years ago; it was a fist fight, there were no weapons involved. For the past four years, no school has been willing to take him. Finally, yesterday a school said they would take him but only for one hour a week. That is just stupid. How do you engage that kid, how do you tell him there is something more for him? He will soon be 18 and unless he really has some hope for the future he will “join up” and become one of the next gang members. He will be one of these kids that everyone says, “well, we tried and we tried and he just did not seem to catch on.”²⁰⁸

Certainly, reluctance among officials dealing with youth in conflict with the law to effectively promote the use of alternative or rehabilitative measures appeared to be an issue of significant concern not just in Saskatchewan, but in Canada more broadly.

²⁰⁶ Committee on the Rights of the Child, *Concluding Observations*, para. 56-57.

²⁰⁷ Healy testimony.

²⁰⁸ Bill Thibodeau, Executive Director, EGADZ (Saskatoon Downtown Youth Centre Inc.), testimony before the Committee, 19 September 2006.

Our Committee believes that there is an urgent need for governments across Canada to reconsider their approaches to youth criminal justice and detention issues in order to rectify Canada's undesirable position among those developed countries with high youth detention rates, so that Canada lives up to the purpose and objectives of the *Convention on the Rights of the Child*.

Our Committee notes that the use of alternative measures is not enough. Children that come into conflict with the law often do so because of a series of other problems and experiences that begin much earlier in their lives. As noted in a Save the Children report, without addressing the challenges that lead children to come into conflict with the law in the first place, the criminalization of children often increases their marginalization and vulnerability.²⁰⁹ **In order to live up to our obligations and effectively combat the high levels of youth detention, governments should implement more effective problem identification and intervention strategies earlier on.** If children with special needs or those who have been involved in the child welfare system often end up in conflict with the law, the solutions needs to begin while they are in contact with health professionals or child welfare authorities. Dealing with the problem too late will never be as effective as early intervention in children's lives. The problem does not necessarily reside with the juvenile justice system, but with society's approach to children as a whole. By looking more closely at the larger problems, the federal government will be better able to determine more effective means of addressing the underlying causes of youth crime, and of supporting youth in conflict with the law within their families and community, providing them with enhanced tools to make better choices in their lives.

In terms of alternative measures, **the federal government needs to work proactively with the provinces and territories to ensure that alternative measures are effectively implemented for youth in conflict with the law.** Restorative justice measures that focus on the offender's accountability to the victim, integration of the offender, and the restoration of harmony in the larger community, are important means of achieving this

²⁰⁹ Martin and Parry-Williams, "The Right not to Lose Hope: Children in Conflict with the Law – A Policy Analysis and Examples of Good Practice." See also the brief submitted by Betty Ann Pottruff, Executive Director of Policy Planning and Evaluation, Department of Justice, Government of Saskatchewan; Driedger testimony; Peter Leuprecht, Professor, Université du Québec à Montréal, testimony before the Committee, 21 February 2005.

goal. As article 37 insists, detention must be used only for the most serious crimes.²¹⁰ The UN Study on Violence Against Children notes that “[d]etention should be reserved for child offenders who are assessed as posing a real danger to others...”²¹¹ Otto Driedger of the University of Regina insisted that in order to come into compliance with the Convention, restorative justice models were imperative – “not as an absolute alternative but as a parallel initiative, that will assist us to have a less polarized approach. But it will be a long process.”²¹²

The Saskatchewan government has adopted a number of alternative measures to deal with that province’s high rates of youth crime and detention. Many of these measures could be used as an example for the rest of the country. For example, in a brief submitted to our Committee, Betty Ann Pottruff told us about educational programs for young offenders, and the use of special courts for drug treatment and family violence. She also told us of Saskatchewan’s increasing reliance on police discretion in charging, diversion programs, non-court processes, and the referral of more youth to health services for assessment and treatment. She told us about special programs targeted specifically towards prevalent youth offences, such as auto theft. The auto theft program involves a combination of monitoring and custody, education and alternative measures for first-time offenders, and has resulted in a 44.1% reduction in auto theft in Regina. In addition, Bill Thibodeau told our Committee of programs being implemented in Saskatchewan to get youth – “described by the police and the prosecutor as the worst that Saskatoon has to offer”²¹³ – interested in particular activities. He told us that youth in conflict with the law get involved with such programs and become

transformed and, indeed, become someone very powerful who takes a real interest in our community and would be willing to give up much of their free time and energy in order to make this a better community.

That did not happen through supervision; it happened through the excitement that they could make that transition from youth to successful adult. Rather than being the kid at the back of the room that no one likes,

²¹⁰ Leuprecht testimony; Driedger testimony; Martin and Parry-Williams, “The Right not to Lose Hope: Children in Conflict with the Law – A Policy Analysis and Examples of Good Practice.”

²¹¹ *Report of the Independent Expert for the United Nations Study on Violence Against Children*, para. 112.

²¹² Driedger testimony.

²¹³ Thibodeau testimony.

they can be at the front of the room saying, “come on you people, we can make a better world.” That is such a powerful process.²¹⁴

Kearney Healy provided our Committee with another promising proposal for dealing with children in conflict with the law, suggesting “wrap-around committees” in which a youth in conflict with the law could work with a social worker, a teacher, a justice worker, and individuals from his or her family to find solutions within that child’s life.

C. CONDITIONS IN DETENTION

With reference to conditions within detention facilities, a number of witnesses criticized Canada’s reservation to article 37(c) and the occasional housing of youth with adult offenders. Rather than focussing on exceptions when in the best interest of the child, Susan Reid of the Centre for Research on Youth at Risk, at St. Thomas University in Fredericton, told the Committee that youth are sometimes housed with adult offenders as a pragmatic solution to deal with overflow or empty beds, or in places such as remote northern communities, where it is often difficult or impractical to construct multiple facilities for such a small population. The Committee on the Rights of the Child continues to criticize Canada’s reservation, regretting the “rather slow process” in the government’s efforts towards removal. The UN Committee has commented that interpretation of a child’s best interests does not include convenience of the State Party.

Ultimately, the concern with respect to housing young offenders with adults revolves around the need to protect children from exploitation and abuse, and the negative influences of adult offenders. The UN Committee’s General Comment on juvenile justice states that “[t]here is abundant evidence that the placement of children in adult prisons or jails compromises their basic safety, well-being, and their future ability to remain free of crime and to integrate.”²¹⁵ Even custodians in adult facilities are a cause for concern, as they are often trained to deal with more hardened adult offenders. Advocates argue that children should be housed separately in order to ensure that the facilities where they are housed are able to respond to their special needs.²¹⁶

²¹⁴ *Ibid.*

²¹⁵ Committee on the Rights of the Child, *General Comment No. 10*, para. 28c.

²¹⁶ *Innocenti Digest*, No. 3, January 1998.

In a similar vein, Judy Finlay, Ontario's Child Advocate, and Peter Leuprecht, of the Université du Québec à Montréal, brought to the Committee's attention the overlap between young offenders and children in need of protection housed in the same facilities: "in certain rehabilitation centres, there is a mixed clientele of young offenders, young accuseds and youths in protection sentenced to closed custody."²¹⁷

The same concerns about the negative influences on children housed with adults arise with respect to children involved in the child welfare system who are in close contact with young offenders. As noted by Professor Leuprecht, "Although the Quebec Human Rights Commission has found that this mixed arrangement is illegal, it nevertheless continues."²¹⁸ Ms. Finlay pointed out the profound impact that such overlap can have on particularly marginalized communities of children, such as Aboriginal children.

The Committee also heard about instances in which female young offenders are housed in the same living units as boys. Asia Czapska of Justice for Girls told us about youth prisons in Prince George and Victoria, British Columbia, where this is "regular practice."²¹⁹ She told us that the provincial government has defended these measures on grounds similar to those used for housing youth with adults – because there are so few female young offenders, girls housed separately would be effectively in isolation, and there are not enough detention units to practically divide girls and boys. However, Ms. Czapska told the Committee that female offenders housed with males are frequently subject to sexual harassment and sexual assault in these British Columbia custody centres.

Professor Leuprecht also noted that the conditions within some detention centres violate a number of children's rights and may sometimes qualify as inhuman and degrading treatment:

[T]he conditions in which young people are detained violates a series of fundamental rights recognized by provincial, federal and international jurisdictions. More particularly, segregation and removal measures are

²¹⁷ Leuprecht testimony.

²¹⁸ *Ibid.*

²¹⁹ Asia Czapska, Housing Strategy Coordinator, Justice for Girls, testimony before the Committee, 21 September 2006.

imposed in a highly debatable manner that can at least be characterized as inhuman and degrading treatment. Furthermore, force is frequently used by supervisors. In Quebec, the Commission des droits de la personne et des droits de la jeunesse has conducted numerous investigations whose findings are distressing.²²⁰

Based on this testimony, our Committee has concluded that Canada is in clear violation of its obligations under section 37. Canada's reservation to this provision only facilitates its non-compliance. As such, **the federal government should withdraw its reservation to article 37 of the Convention and take concrete measures to work with the provinces and territories to ensure that youth are no longer detained with adults, and males no longer detained with female young offenders.** The Convention already provides for exceptions based on the best interests of the child – this would include the situation of a young offender who is soon to turn 18 and will shortly have to be moved to another facility, as well the case of young offenders who may be a danger to the other children with whom they are detained. Governments across Canada persist in allowing pragmatic concerns based on cost to take precedence over the best interests of the child. There are often other practical solutions to such pragmatic problems: the federal government needs to work with the provinces and territories to find them.

RECOMMENDATION 8

Pursuant to articles 37 and 40 of the *Convention on the Rights of the Child*, the Committee recommends that the federal government:

- **Withdraw its reservation to article 37 of the Convention and take concrete measures to work with the provinces and territories to ensure that youth are no longer detained with adults, and males no longer detained with female young offenders;**
- **Undertake to work proactively with the provinces and territories to assess whether the *Youth Criminal Justice Act* is working and to ensure that alternative measures are effectively implemented for youth in conflict with the law; and**
- **Work with the provinces and territories to provide training for child welfare authorities and health professionals in order to help them identify problems**

²²⁰ Leuprecht testimony.

early in order to implement preventative intervention strategies for children at risk of coming into conflict with the law.

Chapter 9 - Articles 9, 12, 19, 20, and 25: Child Protection Issues

A. INTRODUCTION

A number of provisions in the *Convention on the Rights of the Child* deal with issues of child protection and welfare. In particular, they touch on situations where a child may have to be separated from his or her parents. Article 9 lays out the general framework of what measures must be in place before such separation can occur:

Art. 9(1) States Parties shall ensure that a child shall not be separated from his or her parents against their will, except when competent authorities subject to judicial review determine, in accordance with applicable law and procedures, that such separation is necessary for the best interests of the child. Such determination may be necessary in a particular case such as one involving abuse or neglect of the child by the parents, or one where the parents are living separately and a decision must be made as to the child's place of residence.

(2) In any proceedings pursuant to paragraph 1 of the present article, all interested parties shall be given an opportunity to participate in the proceedings and make their views known.

(3) States Parties shall respect the right of the child who is separated from one or both parents to maintain personal relations and direct contact with both parents on a regular basis, except if it is contrary to the child's best interests.

(4) Where such separation results from any action initiated by a State Party, such as the detention, imprisonment, exile, deportation or death (including death arising from any cause while the person is in the custody of the State) of one or both parents or of the child, that State Party shall, upon request, provide the parents, the child or, if appropriate, another member of the family with the essential information concerning the whereabouts of the absent member(s) of the family unless the provision of the information would be detrimental to the well-being of the child. States Parties shall further ensure that the submission of such a request shall of itself entail no adverse consequences for the person(s) concerned.

Article 12 emphasizes the child's right to express his or her views during such proceedings:

Art. 12(1) States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child.

(2) For this purpose, the child shall in particular be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly, or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law.

Articles 19 and 20 highlight the state's responsibility to intervene where it is found that a child is being mistreated or abused:

Art. 19(1) States Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child.

(2) Such protective measures should, as appropriate, include effective procedures for the establishment of social programmes to provide necessary support for the child and for those who have the care of the child, as well as for other forms of prevention and for identification, reporting, referral, investigation, treatment and follow-up of instances of child maltreatment described heretofore, and, as appropriate, for judicial involvement.

Art 20(1) A child temporarily or permanently deprived of his or her family environment, or in whose own best interests cannot be allowed to remain in that environment, shall be entitled to special protection and assistance provided by the State.

(2) States Parties shall in accordance with their national laws ensure alternative care for such a child.

(3) Such care could include, inter alia, foster placement, kafalah of Islamic law, adoption or if necessary placement in suitable institutions for the care of children. When considering solutions, due regard shall be paid to the desirability of continuity in a child's upbringing and to the child's ethnic, religious, cultural and linguistic background.

Finally, article 25 emphasizes the need for periodic review of any decision to separate the child from his or her parents.

Art. 25 States Parties recognize the right of a child who has been placed by the competent authorities for the purposes of care, protection or treatment of his or her physical or mental health, to a periodic review of the treatment provided to the child and all other circumstances relevant to his or her placement.

B. THE RIGHT OF THE CHILD TO BE HEARD AND TO PARTICIPATE

During its hearings across Canada, our Committee heard that many children and youth in the care of the state feel that their rights under the *Convention on the Rights of the Child* are being violated because their voices are not heard in proceedings and decision-making processes concerning their welfare. This is a perspective that was particularly emphasized during our hearings in Saskatchewan, as brought to our attention by Jessica McFarlane of the Saskatchewan Youth in Care and Custody Network, and Marv Bernstein, Saskatchewan's Children's Advocate. In a brief, Mr. Bernstein told us that a number of "vulnerable and disempowered young persons feel their voices given inadequate consideration within the court process."²²¹

He told us that, "unlike any other provincial or territorial child protection statute in Canada, Saskatchewan's Child and Family Services Act explicitly prohibits a child from being treated as a party to, and participating directly in, a child protection proceeding, regardless of age."²²² He said that Saskatchewan's laws do not respect articles 9 and 12 of the Convention, which requires States Parties to recognize that a child is entitled to separate legal representation during child protection proceedings where it is in the child's best interests, where doing so would allow the child's best interests to be expressed, where the child has the capacity to instruct counsel, or where a child's specific interests differ from those of the parent or state. For example, whereas Ontario's *Child and Family Services Act*²²³ creates an independent role for a child's counsel in judicial and administrative child welfare proceedings, section 29(2) of Saskatchewan's *Child and Family Services Act*²²⁴ denies children the right to be a party to such proceedings. Section 4 may allow the child's wishes to be taken into account where practicable, having

²²¹ Bernstein, brief submitted to the Committee.

²²² Bernstein testimony.

²²³ R.S.O. 1990, c. C.11.

²²⁴ R.S.S. 1989-1990, C-7.2.

regard to the child's age and development, but the Act does not allow an individual to act in the child's best interests, and allows for the possibility that a child's views might not be heard because of logistics or reasons of convenience rather than because of the child's inability to communicate his or her views. Mr. Bernstein told our Committee that the Saskatchewan legislation overemphasizes "the interests of the parents – failing to see children as separate individuals who have individual interests and needs."²²⁵

While our Committee recognizes that child protection is an issue of primarily provincial jurisdiction, these are issue of compliance and implementation of the *Convention on the Rights of the Child*. We cannot recommend that the provinces make changes to their child protection legislation or policies; however, we can **suggest that the provinces and territories place increased emphasis on real implementation of the Convention rights with respect to child welfare issues. In this regard, governments across Canada need to examine their legislation with respect to the child's right to be heard.** In his brief to the Committee, Marv Bernstein argued that provinces should work to create strong legislation to ensure that the child has the right to be heard, rather than inviting such participation only in certain circumstances. Jessica McFarlane's brief also suggested that children be allowed to participate or to provide input into the construction of their plan of care (dealing with their schooling, group or foster home placement, involvement of a social worker, etc.). Service provision works best when it takes into account the particular needs of children in and leaving care, whether it be counselling, a home, or proper medical treatment. Identification of these different needs is essential to creating a responsive child protection system that operates on behalf of children, rather than parents or the state. **Our Committee suggests that provincial and territorial governments look seriously at the need to foster young persons' input into the child protection process. In order to comply with the *Convention on the Rights of the Child* their voices need to be heard, and their wishes and best interests at the very least considered.** Children can recognize their responsibilities within the child protection system only if they feel that they have ownership over their own lives.

²²⁵ Bernstein testimony.

C. ISSUES OF TRANSIENCE

Jessica McFarlane also told the Committee of problems of transience for children in the care of the state. Moving from home to home is a common occurrence for such children; finding a position of permanence within one family often takes time or never happens at all. In a brief submitted to the Committee, as well as in her oral submissions, Ms. McFarlane told us that transience can lead to longer-term psychological damage for children in care. Without stability and permanent personal relationships, such children are less able to trust others. Perceived cycles of rejection followed by acceptance and then again by rejection mean that such children find it hard to form the secure personal attachments that are important to creating a stable lifestyle. Research shows that children who constantly move from home to home have a harder time staying in school and more difficulty adjusting when they leave the child welfare system. For children in care who are already marginalized and vulnerable – for example, Aboriginal children, who are significantly overrepresented in the child welfare system – such longer-term consequences of transience can be disastrous.

Our Committee consequently calls on provincial and territorial governments to consider the possibility of working towards a uniformly legislated age of 18 for cut-off from protection in order to comply with the definition of a child as established in the *Convention on the Rights of the Child*. Children are increasingly mobile in today's world – now, more than ever, cut-off ages should be standardized in order to ensure adequate protection for vulnerable children.

D. A UNIFORM AGE FOR PROTECTION

During our hearings across Canada, the Committee was also repeatedly reminded of the lack of a uniform age for child protection in Canada. Child protection is an area of exclusively provincial jurisdiction, and provinces have established varying ages at which they consider a child is independent and no longer in need of protection by the state. Peter Dudding of the Child Welfare League of Canada, and Jahanshah Assadi of the UN High Commissioner for Refugees in Canada, gave us the example of British Columbia, where youth receive some form of protection under child welfare legislation until the age

of 19, while in Ontario the cut-off age is 16. They pointed out that these differences have meant that service providers dealing with migrant children who arrive in Canada without their parents apply different standards in two of the prime destinations for immigration in Canada; in Ontario, they are unable to refer separated children to child protection authorities if the child is over 16.

Other witnesses noted discrepancies in some provinces between the age at which a child is considered independent and the age until which he or she must remain in school. As stated by Susan Reid of the Centre for Research on Youth at Risk at St. Thomas University:

The other thing that is quite interesting about New Brunswick is that there was a push in the Education Act to raise the school leaving age, and they increased it from 16 to 18. You could, in theory, have 16- and 17-year-olds without a home who are required to go to school.²²⁶

Jessica McFarlane echoed this point, noting that in addition to varying cut-off ages, there are also varying levels of support provided to youth leaving the child protection system. She pointed out that, in some provinces, children who reach the cut-off age in the middle of the school year may suddenly be deprived of all supports and services, leaving them stranded at a place and time in life where they may already feel significantly marginalized and vulnerable. The legislation may effectively strip them of a support system when it is most needed.

In order to bring Canada into full compliance with its obligations under the *Convention on the Rights of the Child*, our Committee feels strongly that **provincial and territorial governments should carefully examine the need for after-care support, and the need to assist children leaving the protection system with developing a financial plan and ensuring that they are already in contact with the support services that they may need when they are on their own.**

Statistics show that children are particularly vulnerable to risks of assault, sexual abuse, physical abuse and neglect, often perpetrated by individuals whom the child

²²⁶ Professor Susan Reid, Director, Centre for Research on Youth at Risk, St. Thomas University, testimony before the Committee, 14 June 2005.

knows and trusts.²²⁷ Providing an effective protection system to encompass these children is the first step towards ensuring their health and well-being and living up to obligations under the Convention.

RECOMMENDATION 9

Pursuant to articles 9, 12, 19, 20, and 25 of the *Convention on the Rights of the Child*, the Committee recommends that the federal government organize federal-provincial-territorial consultations with respect to child protection issues and children in the care of the state. These consultations should look focus on whether the Convention has been implemented in the following areas:

- **The need to involve youth more fully in the child protection process;**
- **Working towards a uniformly legislated age of 18 for cut-off from protection; and**
- **The need for continuing support for youth exiting the child protection system.**

²²⁷ Covell testimony.

Chapter 10 - Articles 5, 7, 8, 18, 20, and 21: Adoption and Identity

A. INTRODUCTION

A number of articles in the *Convention on the Rights of the Child* deal with adoption and the consequent obligations of parents and legal guardians. Other articles address the child's right to an identity – which, for many people, is associated with knowledge of one's biological parents. During several of our Committee's hearings, discussions surrounding adoption and donor offspring also led to considerations of identity.²²⁸

B. ARTICLES 5, 18, 20, AND 21: ADOPTION

Articles 5 and 18(1) deal with the state's obligation to respect the rights and responsibilities of parents and guardians in bringing up a child.

Art. 5 States Parties shall respect the responsibilities, rights and duties of parents or, where applicable, the members of the extended family or community as provided for by local custom, legal guardians or other persons legally responsible for the child, to provide, in a manner consistent with the evolving capacities of the child, appropriate direction and guidance in the exercise by the child of the rights recognized in the present Convention.

Art. 18(1) States Parties shall use their best efforts to ensure recognition of the principle that both parents have common responsibilities for the upbringing and development of the child. Parents or, as the case may be, legal guardians, have the primary responsibility for the upbringing and development of the child. The best interests of the child will be their basic concern.

Articles 20 and 21 deal specifically with a state's obligations with respect to adoption.

Art. 20(1) A child temporarily or permanently deprived of his or her family environment, or in whose own best interests cannot be allowed to remain in that environment, shall be entitled to special protection and assistance provided by the State.

²²⁸ This chapter deals only with broader aspects of adoption in Canada. Other more specific issues, such as those relating to immigration, are covered later in the report.

(2) States Parties shall in accordance with their national laws ensure alternative care for such a child.

(3) Such care could include, inter alia, foster placement, kafalah of Islamic law, adoption or if necessary placement in suitable institutions for the care of children. When considering solutions, due regard shall be paid to the desirability of continuity in a child's upbringing and to the child's ethnic, religious, cultural and linguistic background.

Art. 21 States Parties that recognize and/or permit the system of adoption shall ensure that the best interests of the child shall be the paramount consideration and they shall:

(a) Ensure that the adoption of a child is authorized only by competent authorities who determine, in accordance with applicable law and procedures and on the basis of all pertinent and reliable information, that the adoption is permissible in view of the child's status concerning parents, relatives and legal guardians and that, if required, the persons concerned have given their informed consent to the adoption on the basis of such counselling as may be necessary;

(b) Recognize that inter-country adoption may be considered as an alternative means of child's care, if the child cannot be placed in a foster or an adoptive family or cannot in any suitable manner be cared for in the child's country of origin;

(c) Ensure that the child concerned by inter-country adoption enjoys safeguards and standards equivalent to those existing in the case of national adoption;

(d) Take all appropriate measures to ensure that, in inter-country adoption, the placement does not result in improper financial gain for those involved in it;

(e) Promote, where appropriate, the objectives of the present article by concluding bilateral or multilateral arrangements or agreements, and endeavour, within this framework, to ensure that the placement of the child in another country is carried out by competent authorities or organs.

During our hearings, the Committee learned of the vast number of children awaiting adoption in Canada. According to a survey conducted by the Adoption Council of Canada, there are an estimated 76,000 children in the care of provincial, territorial and First Nations agencies across Canada. Over 22,000 children await adoption, while fewer than 1,700 children are adopted annually across the country. Elspeth Ross of the Adoption Council of Canada told our Committee that more children are adopted abroad

and brought into Canada than are adopted within Canada. **More than half of the children awaiting adoption in Canada are Aboriginal.**²²⁹ Our Committee must conclude that there is an adoption crisis in Canada and that solutions need to be found to bring this situation into line with our obligations under the Convention.

Like child protection, adoption is an area of provincial jurisdiction. There is no uniform standard across the country – among other things, while some provinces and territories require homestudies before a child can be placed with a family, others do not; some provinces and territories also require counselling to be provided to birth parents while others do not.²³⁰ Elspeth Ross told our Committee that British Columbia, Alberta, New Brunswick and Ontario are making significant efforts to find adoptive homes for children, while Quebec is also taking steps to amend its legislation. However, initiatives are not nationally coordinated, and the numbers of unadopted children remain high.

In its Concluding Observations, the UN Committee on the Rights of the Child made some general observations about adoption policy and legislation in Canada:

The Committee is encouraged by the priority accorded by the State party to promoting the Hague Convention on the Protection of Children and Cooperation in Respect of Intercountry Adoption of 1993 in Canada and abroad. However, the Committee notes that while adoption falls within the jurisdiction of the provinces and territories, the ratification of the Hague Convention has not been followed up by legal and other appropriate measures in all provinces. The Committee is also concerned that certain provinces do not recognize the right of an adopted child to know, as far as possible, her/his biological parents (art. 7).

The Committee recommends that the State party consider amending its legislation to ensure that information about the date and place of birth of adopted children and their biological parents are preserved and made available to these children. Furthermore, the Committee recommends that the Federal Government ensure the full implementation of The Hague Convention on the Protection of Children and Cooperation in Respect of Intercountry Adoption of 1993 throughout its territory.²³¹

Our Committee recognizes that these are issues of provincial jurisdiction. We wish, however, to echo the recommendations of Elspeth Ross, who suggested that **the federal**

²²⁹ Elspeth Ross, Adoption Council of Canada, brief submitted to the Committee.

²³⁰ *Ibid*; Elspeth Ross, Adoption Council of Canada, testimony before the Committee, 15 May 2006.

²³¹ Committee on the Rights of the Child, *Concluding Observations*, para. 30-31.

government could bring itself into line with the *Convention on the Rights of the Child* and ameliorate the situation of thousands of children awaiting adoption by providing more funding to promote the placement of Canadian children in permanent homes and to provide support services aimed at keeping children within their natural families. Ms. Ross also suggested that governments across Canada promote and encourage other forms of adoption, such as open adoptions (in which the adopted child is encouraged to develop a relationship with his or her birth family), guardianship arrangements, and kinship care, in order to ensure safe and caring homes for some of Canada's most vulnerable children. The federal government could enter into discussions with its provincial and territorial counterparts to discuss the potential for such arrangements.

RECOMMENDATION 10

Pursuant to articles 5, 18, 20 and 21 of the *Convention on the Rights of the Child*, the Committee calls on governments across Canada to recognize and address the adoption crisis in this country, particularly in the case of Aboriginal children. The Committee recommends that the federal government organize consultations with its provincial and territorial counterparts with a view to:

- **Increasing federal funding to promote the placement of children in permanent homes and to provide support services aimed at keeping children within their families;**
- **Streamlining the adoption process; and**
- **Reviewing Canada's adherence to the *Hague Convention on the Protection of Children and Cooperation in Respect of Intercountry Adoption*.**

C. ARTICLES 7 AND 8: IDENTITY

Articles 7 and 8 of the *Convention on the Rights of the Child* deal with issues of the child's right to an identity. They touch on the obligation of the state and parents to register the child immediately after birth, as well as the right of the child to a name and nationality, and to know his or her parents.

Art. 7(1) The child shall be registered immediately after birth and shall have the right from birth to a name, the right to acquire a nationality and as far as possible, the right to know and be cared for by his or her parents.

(2) States Parties shall ensure the implementation of these rights in accordance with their national law and their obligations under the relevant international instruments in this field, in particular where the child would otherwise be stateless.

Art. 8(1) States Parties undertake to respect the right of the child to preserve his or her identity, including nationality, name and family relations as recognized by law without unlawful interference.

(2) Where a child is illegally deprived of some or all of the elements of his or her identity, States Parties shall provide appropriate assistance and protection, with a view to re-establishing speedily his or her identity.

1. Adopted Children and Children of Anonymous Donors

Witnesses told our Committee that currently in Canada, only Alberta, Newfoundland, the Northwest Territories, and British Columbia allow adopted children access to their biological parents' identity (similar legislation received Royal Assent in Ontario in November 2005, although it has yet to fully come into force). Of those jurisdictions, only the Northwest Territories allows unrestricted access – that is, only parents in the Northwest Territories may not veto the disclosure of their identity to a child. This problem was noted by the Committee on the Rights of the Child in its Concluding Observations: “The Committee is also concerned that certain provinces do not recognize the right of an adopted child to know, as far as possible, her/his biological parents (art. 7).”²³²

Yet Canada's obligations do not end with adopted children. Margaret Somerville of McGill University told our Committee that the rise in new forms of assisted reproductive technology is having a significant impact on children across Canada today, and may have an even larger impact into the future. And yet, she argues that the policies and legislation in place to deal with children born through assisted reproductive technology do not take children's best interests adequately into account. Governments and policy-makers are not looking at this issue from the child's perspective.

With regard to donor offspring, Barry Stevens of the Alliance of People Produced by Assisted Reproductive Technology told our Committee that the federal *Assisted Human*

²³² Committee on the Rights of the Child, *Concluding Observations*, para. 30.

*Reproduction Act*²³³ – which prohibits activities such as human cloning, places controls over research involving the *in vitro* embryo, and is intended to protect the health and safety of Canadians who use, or are born from the use of, assisted human reproduction – does not allow for identification of a sperm donor. This Act states that the health and well-being of children born through assisted reproductive technology must be given priority in all decisions respecting use of such technologies, but it does not allow such children access to knowledge of their biological parent; in fact, anyone found to be disseminating such information may be subject to a criminal charge. The child is entitled only to a snapshot of the donor’s health at the time of the donation.

Our Committee was informed that this lack of access to a biological parent’s identity can lead to a number of problems for children, including health concerns, dilemmas involving consanguinity, and issues relating to the child’s sense of identity. Barry Stevens emphasized that a child’s need to know about a parent’s health history is fundamentally important to his or her own health. Many adopted children have no access to health histories. Even for donor offspring, a snapshot of a sperm donor’s health at birth is not sufficient – a child needs to be able to track a donor’s health history and to learn about potential hereditary diseases that may manifest themselves only later in life. Mr. Stevens argued that by denying children access to this information, our society is creating an entire class of individuals who stand at a serious health disadvantage to the rest of the population.

Barry Stevens also informed us that problems related to consanguinity are more common among donor offspring than one might expect. It is not uncommon for one single sperm donor to have dozens of children. Children of the same donor often grow up in the same community and may marry or have children together later in life. He stated:

The less one knows about the donor, the more likely it is that one might meet and marry someone who is his or her half-sibling or even, conceivably, biological father. This may seem extremely unlikely, but remember that people do cluster in groups. Like-minded people tend to get

²³³ S.C. 2004, c. 2.

to know each other, and sometimes they get to know each other because they have had treatment in the same place.

I know of two cases where the people's children play together. Both the mothers and children do not know but I actually do know — through a quirk of fate — that the mothers have the same donor. This situation is partly taken care of in the new act by the fact that if a person contacts the clinic, they will tell that person whether he or she is about to marry his or her half-sibling.²³⁴

With respect to the child's need for an "identity," this need may not be as scientifically grounded as health or consanguinity concerns, but it is a very significant part of a child's emotional well-being and rights. As stated by Barry Stevens:

I would also argue strongly that to know who you come from is a very fundamental human need... It is true for every organism; a one-celled organism can recognize its kin. It is one of the most basic mechanisms, if you like, that living beings have. Throughout our culture, the stories from Oedipus to *Star Wars*, the theme of finding one's father, for better or for worse, are there. To know our genealogy, not just as a hobby, but as a visceral and real thing, is significant to understanding who we are. We turn our back on our entire history and our development, our biology, rather arrogantly and at peril.²³⁵

2. Children of Same-Sex Parents

Fiona Kelly, a PhD candidate at the University of British Columbia, told us about the situation of donor offspring born to same-sex parents. (This is not necessarily a situation of anonymous sperm donation; it may involve an identified male who has accepted to become a donor in order to allow a lesbian couple to have a child.) Using the example of lesbian parents, currently, a child born of donor insemination to same-sex parents will typically have the male donor's name put on the birth registration papers. As such, the male donor is the child's legal father. While the lesbian partner who bears the child is included as the legal mother on the birth registration papers, in many provinces the other mother/parent is entirely excluded from this legal relationship with the child.

²³⁴ Barry Stevens, Founding Member, Alliance of People Produced by Assisted Reproductive Technology, testimony before the Committee, 2 October 2006.

²³⁵ *Ibid.*

Legal approaches to this issue vary by province: in some cases, where the donor is anonymous, the names of both mothers may appear on the birth certificate;²³⁶ in others, the non-biological mother has absolutely no legal relationship to the child. The non-biological mother may choose to legally adopt the child in order to solve this problem; however, the adoption process can take at least six months in most provinces and often involves application fees of several thousands of dollars.

Fiona Kelly told our Committee that:

Canada is currently failing these children. They remain legally vulnerable at the same time that identically situated children who are born through donor insemination to heterosexual couples are legally protected. In other words, Canadian law currently denies them an equal start to life.²³⁷

Our Committee has found that the best interests of the child are not being served by current adoption and donor insemination policies across the country. Children have a right to their own identity – to know who they are – and this right is not always being effectively protected in Canada.

A large part of this right entails **the child's need to know the identity of his or her biological parents. Barry Stevens told our Committee that this does not necessarily mean that adopted children and donor offspring should have a right to contact their parents, but they should have access to such basic information as a name. Another important part of this right is the child's right to medical information about his or her parents,** giving due consideration to the child's need to have an equal opportunity for a healthy life.

Like Barry Stevens and Fiona Kelly, the Committee agrees that **the parental rights and responsibilities of sperm donors should be firmly severed;** that is, donors should not in any way be expected to be parents under the law. Such a separation would make the revelation of a donor's identity more palatable to donors, and would respond to the needs of lesbian parents voiced by Ms. Kelly. Mr. Stevens informed us that such parental

²³⁶ The Ontario Court of Appeal also recently legally recognized the right of a second mother to become a third custodial parent in *A.A. v. B.B.*, [2007] ONCA 2 (Ont. C.A.).

²³⁷ Fiona Kelly, PhD candidate, University of British Columbia, testimony before the Committee, 21 September 2006.

rights and responsibilities have already been severed in provinces such as Quebec and Newfoundland and Labrador. He emphasized that children searching for an identity are not necessarily searching for a parent: “As a grown man, I am not looking for a father – I had a father. The vast majority of offspring are looking for information, which is something different.”²³⁸

As noted earlier in this chapter, adoption is an area of provincial jurisdiction. In order to bring Canada more fully into compliance with the *Convention on the Rights of the Child*, the Committee believes that **the federal-provincial-territorial negotiations on adoption suggested in Recommendation 10 should also look at the issue of access to a biological parent’s identity and at the benefits of identity disclosure vetos.**

In terms of assisted human reproduction, this chapter has raised some serious issues that need to be examined in further detail. The agency established under the *Assisted Human Reproduction Act*, Assisted Human Reproduction Canada, became operational in December 2006. Its mandate includes monitoring and evaluating national and international developments related to assisted human reproduction; consulting with individuals and organizations within Canada and internationally; and providing advice to the Minister of Health on assisted human reproduction and other matters to which the Act applies.²³⁹ **One early task of this Agency should be to review the legal and regulatory regime surrounding donor identity to determine how the best interests of the child can better be served. This review should recognize that access to donors’ identity and to post-donation medical information are essential to a child’s physical and emotional well-being. The regulations linked to the *Assisted Human Reproduction Act* are still being developed; they should be completed as soon as possible to ensure that a fully elaborated legal and regulatory regime exists to protect children’s rights in this regard.**

²³⁸ Stevens testimony.

²³⁹ For more information about Assisted Human Reproduction Canada, see: www.hc-sc.gc.ca/hl-vs/reprod/agenc/index_e.html

RECOMMENDATION 11

Pursuant to articles 7 and 8 of the *Convention on the Right of the Child*, the Committee recommends that the federal-provincial-territorial negotiations on adoption proposed in Recommendation 10 should include consideration of access to a biological parent's identity and of the benefits of identity disclosure vetos. The Committee also recommends that Assisted Human Reproduction Canada review the legal and regulatory regime surrounding sperm donor identity and access to a donor's medical history to determine how the best interests of the child can better be served.

Chapter 11 - Articles 7, 9, 10, 11, 21, 22, 35, and the Optional Protocol: Child Migrants

A. INTRODUCTION

A number of provisions in the *Convention on the Rights of the Child* deal with the rights of child migrants. For example, as noted in the previous chapter, article 7 discusses the child's right to a name and nationality, and to know his or her parents insofar as is possible. Among other things, this article is important for attempting to ensure that children entering Canada have the documentation necessary for their identification and protection.

As noted in Chapter 9, article 9 deals with the child's right not to be separated from his or her parents against his or her will. This concept is particularly important in the immigration context, where children may have been separated from their parents through migration. Article 10 takes this idea further, stipulating the right to family reunification. States Parties are obligated to assist with applications for family reunification in a positive, humane, and expeditious manner. They must also allow children regular contact with parents who reside in a different state.

Art. 10(1) In accordance with the obligation of States Parties under

article 9, paragraph 1, applications by a child or his or her parents to enter or leave a State Party for the purpose of family reunification shall be dealt with by States Parties in a positive, humane and expeditious manner. States Parties shall further ensure that the submission of such a request shall entail no adverse consequences for the applicants and for the members of their family.

(2) A child whose parents reside in different States shall have the right to maintain on a regular basis, save in exceptional circumstances personal relations and direct contacts with both parents. Towards that end and in accordance with the obligation of States Parties under article 9,

paragraph 1, States Parties shall respect the right of the child and his or her parents to leave any country, including their own, and to enter their own country. The right to leave any country shall be subject only to such restrictions as are prescribed by law and which are necessary to protect the national security, public order (ordre public), public health or morals or the rights and freedoms of others and are consistent with the other rights recognized in the present Convention.

Article 11 stipulates that States Parties must take steps to prevent children being taken out of their own country illegally. This obligation is particularly relevant in the context of parental abductions.

Art. 11(1) States Parties shall take measures to combat the illicit transfer and non-return of children abroad.

(2) To this end, States Parties shall promote the conclusion of bilateral or multilateral agreements or accession to existing agreements.

As discussed in Chapter 10, article 21 deals with the issue of adoption, specifically touching on the concept of inter-country adoption. In particular, article 21(c) calls for the same standards to be applied to inter-country adoptions as are applied to national adoptions.

Art. 21 States Parties that recognize and/or permit the system of adoption shall ensure that the best interests of the child shall be the paramount consideration and they shall:

(a) Ensure that the adoption of a child is authorized only by competent authorities who determine, in accordance with applicable law and procedures and on the basis of all pertinent and reliable information, that the adoption is permissible in view of the child's status concerning parents, relatives and legal guardians and that, if required, the persons concerned have given their informed consent to the adoption on the basis of such counselling as may be necessary;

(b) Recognize that inter-country adoption may be considered as an alternative means of child's care, if the child cannot be placed in a foster or an adoptive family or cannot in any suitable manner be cared for in the child's country of origin;

(c) Ensure that the child concerned by inter-country adoption enjoys safeguards and standards equivalent to those existing in the case of national adoption;

(d) Take all appropriate measures to ensure that, in inter-country adoption, the placement does not result in improper financial gain for those involved in it;

(e) Promote, where appropriate, the objectives of the present article by concluding bilateral or multilateral arrangements or agreements, and endeavour, within this framework, to ensure that the placement of the child in another country is carried out by competent authorities or organs.

Article 22 deals with refugee children. States Parties must ensure that refugee children receive appropriate protection and humanitarian assistance.

Art. 22(1) States Parties shall take appropriate measures to ensure that a child who is seeking refugee status or who is considered a refugee in accordance with applicable international or domestic law and procedures shall, whether unaccompanied or accompanied by his or her parents or by any other person, receive appropriate protection and humanitarian assistance in the enjoyment of applicable rights set forth in the present Convention and in other international human rights or humanitarian instruments to which the said States are Parties.

(2) For this purpose, States Parties shall provide, as they consider appropriate, co-operation in any efforts by the United Nations and other competent intergovernmental organizations or nongovernmental organizations co-operating with the United Nations to protect and assist such a child and to trace the parents or other members of the family of any refugee child in order to obtain information necessary for reunification with his or her family. In cases where no parents or other members of the family can be found, 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.

Finally, as noted in Chapter 7, article 35 and the *Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography* strive to protect children from trafficking in persons.

Art. 35 States Parties shall take all appropriate national, bilateral and multilateral measures to prevent the abduction of, the sale of or traffic in children for any purpose or in any form.

Protection of the rights of child migrants in Canada is clearly an area where progress remains to be made. Children fleeing war, sexual exploitation, and persecution arrive at Canada's borders regularly. Yet the Committee on the Rights of the Child has listed

numerous concerns with respect to Canada's approach to dealing with child migrants, stating that:

The Committee welcomes the incorporation of the principle of the best interests of the child in the new Immigration and Refugee Protection Act (2002) and the efforts being made to address the concerns of children in the immigration process, in cooperation with the Office of the United Nations High Commissioner for Refugees and non-governmental organizations. However, the Committee notes that some of the concerns previously expressed have not been adequately addressed, in particular, in cases of family reunification, deportation and deprivation of liberty, priority is not accorded to those in greatest need of help. The Committee is especially concerned at the absence of:

- (a) A national policy on unaccompanied asylum-seeking children;
- (b) Standard procedures for the appointment of legal guardians for these children;
- (c) A definition of "separated child" and a lack of reliable data on asylum-seeking children;
- (d) Adequate training and a consistent approach by the federal authorities in referring vulnerable children to welfare authorities.

In accordance with the principles and provisions of the Convention, especially articles 2, 3, 22 and 37, and with respect to children, whether seeking asylum or not, the Committee recommends that the State party:

- (a) Adopt and implement a national policy on separated children seeking asylum in Canada;
- (b) Implement a process for the appointment of guardians, clearly defining the nature and scope of such guardianship;
- (c) Refrain, as a matter of policy, from detaining unaccompanied minors and clarify the legislative intent of such detention as a measure of "last resort", ensuring the right to speedily challenge the legality of the detention in compliance with article 37 of the Convention;
- (d) Develop better policy and operational guidelines covering the return of separated children who are not in need of international protection to their country of origin;
- (e) Ensure that refugee and asylum-seeking children have access to basic services such as education and health and that there is no discrimination in benefit entitlements for asylum-seeking families that could affect children;

(f) Ensure that family reunification is dealt with in an expeditious manner.²⁴⁰

Our Committee was deeply moved by the testimony heard with respect to migrant children. Separated families, emotionally traumatized children living alone in a new country, children bought and sold into prostitution or exploitative labour situations – witnesses spoke compellingly about this vulnerable class of children. Witnesses cited particular concerns – with respect to inter-country adoption, family reunification, separated children, trafficking in children, detention of child migrants, the best interests of the child migrant, and the role of the designated representative – that will be discussed in the following paragraphs.

B. INTER-COUNTRY ADOPTION

Over the last decade, the number of children adopted abroad per year has stood at about 2,000 – higher than the number of children adopted within Canada each year.²⁴¹ In October 2005, the House of Commons Standing Committee on Citizenship and Immigration released a report²⁴² recommending that children adopted abroad should be entitled to Canadian citizenship without first having to acquire permanent resident status, providing that it is a *bona fide* adoption that meets the requirements of the Hague Convention on Intercountry Adoption. In *Minister of Citizenship and Immigration v. Dular*,²⁴³ the Federal Court also stated that distinctions in law based on adoptive parentage violate section 15, the equality right, of the *Canadian Charter of Rights and Freedoms*.

Yet witnesses told our Committee the current citizenship application process does distinguish adopted children from biological children. The procedure for adopting a child abroad is onerous and unfair to both parents and the adopted child – it is in violation of Canadian equality laws and the *Convention on the Rights of the Child*. These witnesses told us that in order for a child adopted abroad to acquire Canadian citizenship, parents

²⁴⁰ Committee on the Rights of the Child, *Concluding Observations*, para. 46-47.

²⁴¹ Ross testimony; Agnes Lee, testimony before the Committee, 30 October 2006.

²⁴² House of Commons Standing Committee on Citizenship and Immigration, *Updating Canada's Citizenship Laws: It's Time*, October 2005, available at <http://cmte.parl.gc.ca/Content/HOC/committee/381/cimm/reports/rp2014194/cimmrp12/cimmrp12-e.pdf>

²⁴³ [1998] 2 FC 81.

must apply to sponsor the child for permanent residence under the *Immigration and Refugee Protection Act*.²⁴⁴ Only after such status is granted may they apply for citizenship for the child. This process can take years and involves a substantial monetary investment by the parents in terms of application fees.

One of the primary purposes of this lengthy sponsorship process is for the federal government to screen out risks to national security, and to prevent exploitation, trafficking in children or adoptions of convenience intended to skirt Canadian immigration requirements.

However, witnesses appearing before our Committee argued that the *Convention on the Rights of the Child* applies to all children without discrimination – citizenship should be automatically granted to children adopted abroad, just as a biological child of Canadian parents automatically acquires citizenship. They told us that the process is too lengthy and is unfair to adopted children because it distinguishes them procedurally from biological children. It may also subject adopted children to a variety of immigration obstacles and hazards far into their future.

One example of such a hazard arises when parents neglect to apply for citizenship for their adopted child. If the child commits a criminal offence before acquiring citizenship, he or she can be deported from the country.²⁴⁵ Such a child may not even know that he or she did not have Canadian citizenship until the crime is committed and the removal proceedings begin. Janet Dench of the Canadian Council for Refugees and Marian Shermarke of the Programme régional d'accueil et d'intégration des demandeurs d'asile in Montréal pointed out that such a child might have spent almost his or her entire life in Canada, not speak one word of his or her "native" language, and not know a single person in the country of origin. They told us that this situation is a direct violation of Canada's obligations under the Convention.

²⁴⁴ S.C. 2001, c. 27.

²⁴⁵ The same situation may arise if immigrant parents apply for Canadian citizenship for themselves but neglect to do so for their biological child.

In line with this commentary, the federal government proposed changes to the *Citizenship Act*²⁴⁶ in Bill C-14,²⁴⁷ which was reviewed and reported on by the House of Commons Standing Committee on Citizenship and Immigration in October 2006.²⁴⁸

Bill C-14 would facilitate the process for adopting children abroad, eliminating the need to apply for permanent resident status, and working towards ensuring that adopted and biological children are treated equally under the law. Ultimately, Bill C-14 would grant citizenship to a child adopted abroad if the adoption is considered in the best interests of the child, creates a genuine parent-child relationship, is in accordance with the laws of the place where adoption occurred and the laws of the country of residence of the adopting citizen, and is not entered into primarily for purposes of acquiring status or privilege in relation to immigration or citizenship.

Yet, despite general satisfaction with these proposed changes, some witnesses expressed reservations. Robert Marsh stated that although Bill C-14 reduces the administrative burdens associated with adoption abroad, adopted and biological children would still be treated separately under the law. Adopted children will still have to apply for Canadian citizenship, while biological children simply have to make an application for proof of citizenship. He told us that although this may only be a small administrative difference, it is a significant symbolic one.

In addition, Jim Kelly joined Robert Marsh in emphasizing that federal immigration officials would still have to approve the adoption process that has already taken place, confirming that the adoption was actually in the best interests of the child. Mr. Marsh pointed out that by this stage the adoption would have already been approved by the relevant provincial adoption authorities. He expressed doubt that federal immigration officials were adequately trained for investigating the genuine nature of an adoption, and argued that they should focus on problematic cases rather than reviewing all adoptions abroad.

²⁴⁶ R.S.C. 1985, c. C-29.

²⁴⁷ Available at: www2.parl.gc.ca/content/hoc/Bills/391/Government/C-14/C-14_2/C-14_2.PDF

²⁴⁸ House of Commons Standing Committee on Citizenship and Immigration, *Fifth Report*, 2 October 2006, available at: <http://cmte.parl.gc.ca/cmte/CommitteePublication.aspx?SourceId=171815>

Rebutting the federal government's arguments for screening adoptions mentioned above, Agnes Lee pointed out that young children rarely pose any threat to national security, and that individuals trafficking children would be unlikely to take the step of applying for Canadian citizenship for a trafficked child who has already passed through the adoption process and is residing in Canada. This is why the provincial adoption process is so rigorous in the first place. Robert Marsh argued that, ultimately, "the burden of proof should be on the authorities for the denial, and that the basic standard case should be making citizenship automatic if it is a legitimate adoption."²⁴⁹ Witnesses told our Committee that refusing to grant automatic citizenship to children adopted abroad once the adoption has been approved by provincial authorities is not in the child's best interests: "[n]ot granting the children automatic citizenship cannot provide these children with more protection"²⁵⁰ than they already have.

Our Committee notes that this is a difficult problem. There are fundamental reasons why the federal government does not grant automatic citizenship. Beyond national security concerns and avoiding adoptions of convenience, the federal government does not grant automatic citizenship because it must screen out situations of child trafficking and other forms of exploitation. However, it may be that the appropriate balance has not yet been struck. Bill C-14 is currently under consideration in Parliament and will eventually be submitted to a Senate committee for further review. **Our Committee urges that the Senate committee take the concerns voiced in this report into serious consideration, and that it allow the witnesses who appeared before us to come forward again to express their views based on the specific provisions of the proposed legislation. If the Bill is passed, the federal government may wish to consider implementing a pilot project designed to determine whether immigration officials can rely on the provincial adoption approval process to assess whether the best interests of the child are being served.**

²⁴⁹ Robert Marsh, testimony before the Committee, 30 October 2006.

²⁵⁰ Lee testimony.

C. FAMILY REUNIFICATION

Family reunification is also an issue of significant concern for child migrants and immigrant families in Canada. In its Concluding Observations, the UN Committee on the Rights of the Child criticized Canada for taking insufficient measures to facilitate family reunification. As a signatory to the *Convention on the Rights of the Child*, Canada is obligated to deal with applications for family reunification for a child “in a positive, humane and expeditious manner,” and yet immigrants to this country commonly face long delays, leading to prolonged separations for parents and children.

Brian Grant, Director General of International and Intergovernmental Relations of Citizenship and Immigration Canada, told our Committee that the Department of Citizenship and Immigration has a service standard of six months for the reunification of nuclear families. However, statistics released by the department show that between August 2005 and September 2006, after four months only 50% of applications for children sponsored through the family class immigration category were processed. This number rose to 70% after eight months.²⁵¹ For dependants of refugees during this same period, only 30% of applications had been processed after seven months.²⁵² Marian Shermarke deplored this situation, blaming it on a lack of resources and an absence of mechanisms to ensure that a child’s immigration application is given priority.

The Committee was told that the Department of Citizenship and Immigration’s frequent demands for DNA testing to prove parenthood have also led to delays and prolonged separations, in direct violation of the best interests of the child. Although these tests are becoming increasingly available, they are too expensive for most immigrant families, and can lead to problems for families who may consequently discover that a child is not the biological child of one parent. Janet Dench argued that the requirement for DNA testing essentially means that Canada does not recognize other

²⁵¹ Citizenship and Immigration Canada, “Statistical Information: Applications Processed at Canadian Visa Offices – Family Class: Dependent Children,” 13 December 2006, available at: www.cic.gc.ca/english/department/times-int/06-fc-children.html

²⁵² Citizenship and Immigration Canada, “Statistical Information: Applications Processed at Canadian Visa Offices – Dependants of Refugees,” 13 December 2006, available at: www.cic.gc.ca/english/department/times-int/12-ref-dependants.html

forms of kinship and will accept only biological children as immigrants. This has the potential to strip some children of their families.

The Committee also heard about a significant difference between the applications of parents and children accepted as refugees in Canada. An adult who is granted refugee status in Canada can include his or her children and spouse on an application for permanent residence. By contrast, a child who has been granted refugee status in Canada cannot include his or her parents or siblings on such an application. Witnesses told us that this difference appears to be based on a fear that parents will send their children to Canada as asylum claimants in order to gain a “toehold” for the entire family. However, they pointed out that if the Canadian government grants a child refugee status, this means that the child has a legitimate basis for claiming asylum, and it is therefore likely that his or her parents have a similar basis for such a claim. Sister Deborah Isaacs pointed out that, in case of doubt, the hardship of family separation may be greater than the eventual cost of removal if it is later found that the parents do not have a valid claim.

Finally, Janet Dench and Sister Deborah Isaacs told our Committee of yet another obstacle to family reunification. Canada has an immigration policy which states that a family member who was not examined at the time that the sponsor originally came to Canada cannot later be admitted as a family member. Thus, a child who was not born when a parent first entered Canada and who was consequently not mentioned on the immigration application may be denied admission to Canada when the parent later makes the application for reunification.

Several witnesses described the devastating effects that prolonged separation can have on both children and their families, pointing out that such separations can ultimately result in emotional estrangement, even though the family may be physically reunited. Separated from their families, children are prone to feelings of abandonment or of being unloved, often losing trust in their parents. Both children and parents often suffer from depression, and even when the family is reunited conflicts are frequent and family ties may not survive. Marian Shermarke described the effects of separation to our Committee:

In the field, we do see children [who are sent ahead of their families to Canada] who unconsciously refuse to eat. In fact, they are in therapy for this with psychologists. They are guilt ridden for having left family members in critical conditions and they feel horribly guilty for living in comfort when their relatives are not.

On a daily basis, we see that it has an effect on their development. To counter that, we try to ride up a budget with these children so that they can send [off] at least \$20 per month to found family members, in order to reduce their sense of guilt...

[T]he longer family reunification takes, the more chances there are that when the family is reunified, the family dynamics will be a mess.

A lot of parents tell us that they have the feeling they are receiving strangers. The fact that there is a rejection is often related to the length of family reunification.²⁵³

Asked about success stories, Victor Porter of MOSAIC told the Committee that

We see success stories constantly. One of the beauties arising out of the work that we do is that every month or so, we have a mother or a father coming to us to introduce us to their children and saying, "We finally landed them. Here they are. You know, this is the person who helped us."

Those are success stories. The concern is that there is such a waste of time and resources. Parents send money to where their children are. The children come here and they do not know that their parents have tried very hard to get them here. Some have this feeling of resentment against their parents. "Why did you not bring me earlier? Why did I have to wait five years, three years, four years?" Those are some of the issues that we see again and again through our family programs, where there is counselling and parenting groups, and so on, and it is not an isolated event. It is recurring. There is a pattern of this kind of connection between the children who arrive later, and their parents.²⁵⁴

Janet Dench told us that, much like the rationale behind policies with respect to children adopted overseas, the government often justifies particular measures that prolong family separations by citing the need to protect children from trafficking and other forms of exploitation. However, she questioned the use of such an argument to

²⁵³ Marian Shermarke, representative, Programme régional d'accueil et d'intégration des demandeurs d'asile (PRAIDA), testimony before the Committee, 6 November 2006.

²⁵⁴ Victor Porter, MOSAIC, testimony before the Committee, 21 September 2006.

justify delays that can cause such harm to children's emotional and even physical well-being.

Again, our Committee notes that the appropriate balance may not yet have been struck. The Committee has been made acutely aware of the long delays faced by many migrating families and children, the long separations that can ensue, and the harmful emotional and even physical consequences. In order to find the appropriate balance and the most effective approach to children's rights with respect to the *Convention on the Rights of the Child*, **the Department of Citizenship and Immigration should devote more resources and energy to rectifying these backlogs, particularly in its overseas visa offices. Applications should be processed at a swifter pace, with due regard to the need to keep families together or to reunite them as soon as possible. Victor Porter noted that the Department of Citizenship and Immigration should strongly consider changing the guidelines in order to allow children to be reunited with their family in Canada and to be processed inland like spouses.**

D. SEPARATED CHILDREN AND TRAFFICKING IN PERSONS

Another issue of persistent concern with respect to family reunification is the situation of separated children in Canada. Separated children are defined as children who are outside their country of origin without parents or a legal or customary caregiver. This includes the case of a child who arrives in Canada with a relative who is not his or her legal guardian and who may not have the capacity to provide the child with adequate protection in Canada. Another frequently used term is "unaccompanied minor," although this phrase applies to a narrower group of migrant children – those who arrive entirely alone in Canada.²⁵⁵

Separated children may have become separated from their parents for a variety of reasons, arriving at Canada's borders because of war or other threats to their safety, experiences as a child soldier, as a safety measure because of socio-political changes, because of their parents' disappearance or imprisonment, or because of a desire for a

²⁵⁵ Sister Deborah Isaacs, Separated Children Intervention and Orientation Network, testimony before the Committee, 21 September 2006.

better future. A portrait of separated children in Canada began to emerge from briefs submitted to the Committee by Marian Shermarke and Claude Malette. According to these documents, 82% of the 207 separated children interviewed were 14 years old or older, and 65% were male.²⁵⁶ Upon arrival in Canada such children may be particularly vulnerable, often dealing with issues of family separation or death, anxiety about their insecure status in Canada, the trauma consequent to witnessing or being a victim of violence, or anxiety about adaptation to a new language and culture.²⁵⁷

Canada was one of the first industrialized countries to react to the problem of separated children by issuing specific guidelines on children seeking asylum in 1996.²⁵⁸ These guidelines establish the procedures for processing refugee claims for children, with a specific section on how to deal with separated children. Although the guidelines are not binding on members of the Immigration and Refugee Board of Canada, they do provide standards that must generally be respected. By contrast, the *Immigration and Refugee Protection Act* does not specifically mention how to deal with separated children. As Claudette Deschênes of the Canada Border Services Agency and Paul Aterman of the Immigration and Refugee Board informed us, Canada Border Services Agency officers are already required to pay extra attention to the situation of all child migrants, with a mandatory referral for a detailed secondary examination. Unaccompanied children are also given scheduling priority before the Immigration and Refugee Board.

In 2005, the Immigration and Refugee Board dealt with over 25,000 refugee claims, 540 of which were initially identified as claims by unaccompanied minors. While it was ultimately found that the majority of these children did have some family in Canada,²⁵⁹ many of them were likely still separated from their parents or legal/customary caregiver.

²⁵⁶ Martine Therrien, “Profil des mineurs non-accompagnés,” Service d’aide aux réfugiés et aux immigrants du Montréal métropolitain (SARIMM), 3 November 2006.

²⁵⁷ Ghislaine Roy, “Pratique sociale interculturelle au SARIMM,” SARIMM, December 2005.

²⁵⁸ Immigration and Refugee Board of Canada, *Guideline 3: Refugee Claimants – Procedural and Evidentiary Issues*, 30 September 1996, available at www.irb-cisr.gc.ca/en/references/policy/guidelines/child_e.htm

²⁵⁹ Paul Aterman, Director General, Operations, Immigration and Refugee Board of Canada, brief submitted to the Committee.

Brian Grant told our Committee that Citizenship and Immigration Canada is “working toward a comprehensive policy on resettling separated minors,”²⁶⁰ which will ultimately depend on the availability of adoptive parents or legal guardians who can ensure safety and protection for those children. As noted in Chapter 9, the age at which children are cut off from child protection varies across the country. Jahanshah Assadi of the Canadian office of the United Nations High Commissioner for Refugees expressed particular concern with respect to the low cut-off age in Ontario (16), as that province receives a majority of the separated children seeking asylum in Canada. If there is no possibility of family reunification a child can be made a ward of the state until the age of 18, but he or she first has to obtain permanent resident status; this is often a long process, and in the meantime, the child is left without a legal guardian.²⁶¹ This is a clear violation of a child’s rights under the *Convention on the Rights of the Child*. Sister Deborah Isaacs also pointed out that children below the age of 18 cannot apply for citizenship under the *Citizenship Act* – this can only be done by a parent or guardian. As provinces may not apply for citizenship on behalf of separated children in foster care, such children will be unable to regularize their immigration status until they turn 18. Finally, separated children are also at a disadvantage in some provinces, such as Quebec, where they cannot apply for social assistance until the age of 18. Until that time, it is the provincial government’s responsibility to provide financially for the child.²⁶²

As a subset of this issue, stories of children bought, sold, and brought across the Canadian border for the purposes of sexual or other forms of exploitation are particularly horrific, representing one of the worst possible fates for unaccompanied children in Canada. This is an issue of particular concern for children (girls most specifically), as it is easy for an adult to pass a child off as his or her own. Trafficking in children is one of the primary reasons behind the government’s careful scrutiny of child migration and citizenship applications.

²⁶⁰ Brian Grant, Director General, International and Intergovernmental Relations, Citizenship and Immigration Canada, testimony before the Committee, 15 May 2006.

²⁶¹ Kim Chao, *Separated Children*, Report prepared for the Standing Senate Committee on Human Rights, 2005.

²⁶² Roy, “Pratique sociale interculturelle au SARIMM.”

Although the government has no concrete evidence of trafficking in children into Canada,²⁶³ anecdotal evidence abounds. Service providers point out that official estimates do not exist because trafficking is so underground and hard to deal with. Children may also only be exploited once they are across the border – trafficking is not necessarily easy to identify at the actual border crossing or by reading an immigration application.

The federal government has launched a number of initiatives to combat trafficking in persons. In 2005, sections 279.01 to 279.04 were added to the *Criminal Code* to specifically prohibit:

- Trafficking in persons, defined as the recruitment, transport, transfer, receipt, concealment or harbouring of a person, or the exercise of control, direction or influence over the movements of a person, for the purpose of exploitation;
- A person from benefiting economically from trafficking; and
- Withholding or destroying identity, immigration, or travel documents to facilitate trafficking in persons.

Outside the *Criminal Code*, the *Immigration and Refugee Protection Act* targets cross-border trafficking in persons through section 118. This section defines the offence of trafficking – to knowingly organize one or more persons to come into Canada by means of abduction, fraud, deception, or the use of force or coercion – and prohibits the recruitment, transportation, receipt, and harbouring of trafficked persons. Sections 122 and 123 outline the additional offence of using travel documents to contravene the Act, as well as the buying or selling of such travel documents.

In May 2006, the Department of Citizenship and Immigration also launched a policy to provide free 120-day temporary residence permits for trafficked persons.²⁶⁴ Recipients of such permits are eligible for medical and social counselling assistance and other health service benefits. These permits may also be extended based on an immigration officer's assessment of whether it is reasonably safe and possible for the individual to return and

²⁶³ Grant testimony.

²⁶⁴ Citizenship and Immigration Canada, Temporary Resident Permits policy, 26 May 2006, pp. 23-29, available at: www.cic.gc.ca/manuals-guides/english/ip/ip01e.pdf

re-establish a life in his or her country of origin or last permanent residence, whether the individual is needed and willing to assist the authorities in an investigation or prosecution, and any other relevant factors.

None of these laws and programs is specifically targeted towards children, however, and it remains to be seen to what extent the particular needs and interests of children will be taken into account through implementation.

Our Committee believes that a number of measures also need to be implemented in order to better protect separated and unaccompanied children and to bring Canada into strict compliance with the Convention. In its General Comment on the treatment of unaccompanied and separated children, the Committee on the Rights of the Child emphasized that:

The ultimate aim in addressing the fate of unaccompanied or separated children is to identify a durable solution that addresses all their protection needs, takes into account the child's view and, wherever possible, leads to overcoming the situation of a child being unaccompanied or separated.²⁶⁵

In the Committee's view, **the Department of Citizenship and Immigration should strongly consider the possibility of allowing separated children to include their parents on applications for permanent residence in order to resolve the current difference between parent and child applications.**

Our Committee also suggests that, upon the arrival of a potentially separated child at the border, measures be implemented to ensure that:

- **There is an immediate attempt to identify whether the child is unaccompanied, separated, or even trafficked – this would include erring on the side of providing the child with enhanced protection rather than waiting for official confirmation;**
- **An interview is immediately conducted in an age-appropriate and gender-sensitive manner by trained officials in order to ascertain the identity and citizenship of the child, parents, and siblings, and to assess the reasons for separation, as well as any particular vulnerabilities or protection needs;**

²⁶⁵ Committee on the Rights of the Child, *General Comment No. 6: Treatment of Unaccompanied and Separated Children Outside their Country of Origin*, CRC/GC/2005/6, 1 September 2005, para. 79.

- **Identification documentation is provided for the child, insofar as is possible, and that active attempts to trace the child's family members commence as soon as possible;**
- **A clear mechanism is put in place to ensure the automatic involvement of child welfare authorities once a child's vulnerable status is determined, in order to provide protection and other services for that child; and**
- **A specific guardian is appointed as soon as possible, and shall remain that child's guardian until he or she reaches 18 or leaves the country.**

As was recommended in Chapter 9 with respect to child protection issues, **the federal government should also work with the provinces and territories to discuss ways in which separated children arriving in Canada are provided with at least minimum standards of care and protection until the age of 18.**

E. DETENTION OF CHILD MIGRANTS

A number of witnesses also raised concerns with respect to the detention of child migrants in Canada. In particular, critics point to the case of 134 separated children who arrived off the coast of British Columbia from China in 1999. Eighteen of these children were held in youth detention centres for seven months because of their suspected involvement with the smugglers.²⁶⁶

Like the *Convention on the Rights of the Child*, section 60 of the *Immigration and Refugee Protection Act* clearly states that children should be detained only as a measure of last resort. Claudette Deschênes told our Committee that this is an important part of the training program for immigration officers. She said that:

Minors are detained only as a last resort, taking into account the availability of alternatives to detention, the anticipated length of the detention, the risk of continued control by human smugglers or traffickers and the type of detention facility. The decision to detain is never made without consideration of the best interests of the child...

What we normally do with an unaccompanied minor is call the provincial social organizations, but that does not always work out.²⁶⁷

²⁶⁶ Chao, *Separated Children*.

²⁶⁷ Claudette Deschênes, Vice-President, Enforcement Branch, Canada Border Services Agency, testimony before the Committee, 15 May 2006.

Emphasizing that “[d]etention is used very rarely for minors,”²⁶⁸ she told us that when such detentions do occur, children are usually held for less than six days in an immigration holding centre. These facilities vary from hotel-like accommodations in Toronto, to guarded facilities in other locations. When children are detained for more than six or seven days, education facilities are made available. Paul Aterman told us that in any given period over the last 18 months, fewer than 10 migrant children were being detained nationally, and for a period not exceeding 12 days. He said that it is important to remember that detention is sometimes in the best interests of the child. Ms. Deschênes informed us that in 2005-2006, 715 migrant children were detained in Canada, 70% of whom were detained for less than six days. Six hundred and twenty of these children were accompanied, and 95 were unaccompanied. This point was corroborated by Marian Shermarke, who told us that children accompanied by their parents are much more likely to be detained than separated children.

Our Committee wishes to emphasize that the federal government needs to make all efforts to come into compliance with the *Convention on the Rights of the Child* in this regard, and that priority should always be given to the best interests of the child. Immigration and border services officials should ensure that the policies and guidelines in place are respected: children should be detained only as a last resort and for a minimal amount of time. When in detention, they should also be provided with access to education, counselling, and recreation. As specified by the Committee on the Rights of the Child:

Special arrangements must be made for living quarters that are suitable for children and that separate them from adults, unless it is considered in the child’s best interests not to do so. Indeed, the underlying approach to such a programme should be “care” and not “detention”. Facilities should not be located in isolated areas where culturally appropriate community resources and access to legal aid are unavailable. Children should have the opportunity to make regular contact and receive visits from friends, relatives, religious, social and legal counsel and their guardian. They should also be provided with the opportunity to receive all basic necessities as well as appropriate medical treatment and psychological counselling where necessary. During their period in detention, children have the right to education which ought, ideally, to take place outside the

²⁶⁸ *Ibid.*

detention premises in order to facilitate the continuance of their education upon release.²⁶⁹

F. THE DESIGNATED REPRESENTATIVE

In Canada, when a child migrant is party to an asylum proceeding and does not have the capacity to act for him or herself, the legislation states that a designated representative must be appointed. The designated representative's role is to act in the child's best interests before the Immigration and Refugee Board. This role is often undertaken by a lawyer, a social services worker, or another individual known to the child, such as the parent. The designated representative acts as a litigation guardian only, not as a social guardian outside of the immigration proceedings. He or she can hire and instruct counsel, make decisions with respect to proceedings, seek out evidence, act as a witness, and keep the child informed of the proceedings.²⁷⁰

Different regions approach the designated representative differently. Paul Aterman told our Committee that:

In Quebec, for example, we have a standing relationship with an NGO that deals primarily with immigrant and refugee children. We at the board deal with them on a regular basis. They are our liaison with the social services agency. It is quite an effective working relationship.

In Toronto, we have had to improvise a little. We have a relationship with the law firm McCarthy Tétrault, which provides pro bono services for the children who appear before us. Sometimes we deal with individual lawyers who act as designated representatives and sometimes we deal with social services agencies. It is a little ad hoc in some instances.²⁷¹

Although the appointment and role of the designated representative was generally looked upon favourably by witnesses appearing before our Committee, some concerns were expressed. For example, the Canadian office of the UN High Commissioner for Refugees emphasized that this representative does not cover all of the child's guardianship needs, and that a mechanism should be put in place to ensure that separated children are adequately protected upon arrival in Canada. The Canadian Council for

²⁶⁹ *Ibid.*, para. 63.

²⁷⁰ Chao, *Separated Children*; Paul Aterman, testimony before the Committee, 15 May 2006.

²⁷¹ Aterman testimony.

Refugees echoed this concern in a paper submitted to the Committee, noting that the role of the designated representative is not spelled out in the *Immigration and Refugee Protection Act* and that the representative is not mandated to act before the hearing in order to help the child prepare. As a result, a child migrant may be interviewed by immigration or border services officials without a guardian present to represent his or her best interests.²⁷² In keeping with Canada's obligations under the *Convention on the Rights of the Child*, **our Committee suggests that the federal government review the role of the designated representative with a view to potentially expanding this role to provide assistance to children when they arrive in Canada.**

G. BEST INTERESTS OF THE CHILD

The principle of “best interests of the child” arises particularly frequently in discussions of the rights of migrant children. The majority of the court in *Baker v. Canada (Minister of Citizenship and Immigration)* ruled that although Canada had not incorporated the *Convention on the Rights of the Child* into domestic law, the Convention's guiding principle making the best interests of the child a primary consideration in decision-making concerning children should play a role in the government's decision-making process.

In concrete terms, Canada's immigration legislation explicitly mentions the best interests of the child in numerous contexts, and Brian Grant told us that in 2005, the Department of Citizenship and Immigration released enhanced policy guidelines on the best interests of the migrant child. Training is provided to immigration officers based on these guidelines. Paul Aterman also explained how the best interests principle is applied in the management of asylum cases. Although Immigration and Refugee Board members may not be able to make a decision differently based on this principle, they may at least be able to process the case differently.

However, other witnesses criticized the government's approach to the best interests principle, stating that the “best interests of the child are not on the screen of the people

²⁷² Canadian Council for Refugees, *Impacts on Children of the Immigration and Refugee Protection Act*, November 2004, available at: www.web.net/~ccr/children.pdf

who are dealing with these cases”²⁷³ and that Canada is consequently not acting in compliance with the Convention. Janet Dench told our Committee that the government has interpreted explicit references to the best interests of the child in policy and legislation to mean that officials are not required to take this principle into consideration where it is not explicitly mentioned. She and Sister Deborah Isaacs also told us that the government’s policy is only to take the best interests of the migrant child “into account,” rather than making this principle a “primary consideration” as is stipulated in the Convention. Finally, they emphasized that because applications based on humanitarian and compassionate grounds (which do take the best interests of the child into account) take so long to process, the best interests principle is often overlooked before more drastic actions such as deportations are carried out.

Government officials told our Committee that Canada Border Services Agency and Citizenship and Immigration officers at border entry points are all trained to interview children, and that Immigration and Refugee Board members are trained to deal sensitively with children during immigration hearings.²⁷⁴ Paul Aterman told us that the Immigration and Refugee Board is currently working on guidelines for procedures with respect to vulnerable persons appearing before the Board. He said that Board members also receive orientation and ongoing training with respect to the impact of Canada’s international human rights obligations on their work. This training places emphasis on dealing with child witnesses, applying the best interests principle on a procedural and substantive level, and on new developments in the law with relation to children.

However, witnesses pointed out that Canada’s 1996 guidelines with respect to children do not require officials who interview or question children to have training in how to conduct interviews with children, or to have background knowledge of child development. They argued that the training currently received by immigration and border services officials is not enough: they need to know not only about the law, but also about a child’s background and language. Marian Shermarke went so far as to propose

²⁷³ Porter testimony.

²⁷⁴ Aterman testimony; Micheline Aucoin, Director General, Refugees Branch, Citizenship and Immigration Canada, testimony before the Committee, 15 May 2006.

the creation of a specialized Immigration and Refugee Board panel to deal specifically with child migrant issues, much like the specialized proceedings being developed in courtrooms across the country.

Finally, the Committee also heard that the return of a migrant child to his or her country of origin can be a traumatic and even harmful experience. David Matas and Sister Deborah Isaacs told us that there is no mechanism currently in place within Canadian policy or legislation to specifically mandate consideration of the best interests of a child when removing him or her from Canada.

They stated that separation from one's parents is not necessarily seen by the government as an undue hardship, and although removal may be delayed until a child finishes school in Canada, the only existing mechanism that ensures consideration of the best interests of the child is an application to stay in Canada based on humanitarian and compassionate grounds. However, as noted above, this humanitarian and compassionate immigration application is not coordinated with the removals procedure and a final decision may take months or years. By that point, the child may have already been deported.

This situation is a clear violation of the federal government's obligations under the *Convention on the Rights of the Child*. Respect for Canada's legal obligations means that the best interests of the child should be considered not only in proceedings to remove a child, but in proceedings to remove a child's parents. The deportation of parents can have a significant impact on a child with legal status who has been left behind.

Consequently, our Committee emphasizes that **the best interests of the child should always be a primary consideration in immigration decisions affecting children. All immigration and border services officials dealing with children should receive orientation and ongoing training to ensure that they are fully aware of children's rights, as well as how to communicate effectively with children of different cultural backgrounds.** The training programs that currently exist should be enhanced and revised to take into account the comments and criticisms expressed in this report.

Echoing the recommendations of David Matas and Jahanshah Assadi, our Committee also suggests that **federal immigration officials ensure that migrant children are returned to their country of origin only after a final determination of whether or not compelling humanitarian and compassionate grounds exist to allow the child to remain in Canada, and a comprehensive pre-removal risk assessment with significant emphasis on the best interests of the child has been undertaken. If the child is returned, officials should ensure that appropriate safeguards are in place in the country of origin.** For example, as noted in the UN Committee's General Comment, children at risk of being re-trafficked should not be returned unless the return is in their best interests and appropriate measures for their protection have been taken in the country of origin. These would include counselling for the child and family tracing to ensure that appropriate care and guardianship arrangements are in place for the child's return.

RECOMMENDATION 12

Pursuant to articles 7, 9, 10, 11, 21, 22, and 35 of the *Convention on the Rights of the Child* and the *Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography*, the Committee recommends that:

- **The Senate committee examining Bill C-14 take the concerns voiced in this report into serious consideration and that if the Bill is passed, the federal government implement a pilot project to determine whether immigration officials can rely on the provincial adoption approval process to assess whether the best interests of the child are being served;**
- **The Department of Citizenship and Immigration devote more resources to rectify backlogs delaying family reunification, particularly in its overseas visa offices, and strongly consider changes to immigration guidelines to allow children to be processed inland like spouses, as well as allowing separated children to include their parents on applications for permanent residence;**
- **Specific measures be put in place to ensure effective identification and protection of potentially separated children at the border;**
- **Priority always be given to the best interests of the child when dealing with the detention of migrant children;**
- **Migrant children are returned to their country of origin only after a final determination of whether or not compelling humanitarian and compassionate grounds exist to allow the child to remain in Canada, and a**

- comprehensive pre-removal risk assessment with significant emphasis on the best interests of the child has been undertaken; and**
- **All immigration and border services officials dealing with children in any way receive orientation and ongoing training to ensure that they are fully aware of children's rights, as well as how to communicate effectively with children of different cultural backgrounds.**

Chapter 12 - Articles 18, 28, and 29: Early Childhood Development

Articles 18, 28, and 29 of the *Convention on the Rights of the Child* deal with child care and early childhood development. Articles 28 and 29 discuss the child's right to education. Article 28(1) states that:

Art 28(1) States Parties recognize the right of the child to education, and with a view to achieving this right progressively and on the basis of equal opportunity, they shall, in particular:

- (a) Make primary education compulsory and available free to all;
- (b) Encourage the development of different forms of secondary education, including general and vocational education, make them available and accessible to every child, and take appropriate measures such as the introduction of free education and offering financial assistance in case of need;
- (c) Make higher education accessible to all on the basis of capacity by every appropriate means;
- (d) Make educational and vocational information and guidance available and accessible to all children;
- (e) Take measures to encourage regular attendance at schools and the reduction of drop-out rates.

Article 29 deals with the quality of education:

Art. 29(1) States Parties agree that the education of the child shall be directed to:

- (a) The development of the child's personality, talents and mental and physical abilities to their fullest potential;
- (b) The development of respect for human rights and fundamental freedoms, and for the principles enshrined in the Charter of the United Nations;
- (c) The development of respect for the child's parents, his or her own cultural identity, language and values, for the national values of the

country in which the child is living, the country from which he or she may originate, and for civilizations different from his or her own;

(d) The preparation of the child for responsible life in a free society, in the spirit of understanding, peace, tolerance, equality of sexes, and friendship among all peoples, ethnic, national and religious groups and persons of indigenous origin;

(e) The development of respect for the natural environment.

(2) No part of the present article or article 28 shall be construed so as to interfere with the liberty of individuals and bodies to establish and direct educational institutions, subject always to the observance of the principle set forth in paragraph 1 of the present article and to the requirements that the education given in such institutions shall conform to such minimum standards as may be laid down by the State.

As cited in Chapter 10, article 18 discusses the state's responsibility to assist parents in the performance of their child-rearing responsibilities and ensure that children have the right to benefit from child care services and facilities.

The *Convention on the Rights of the Child* places particular emphasis on the need to provide protection for children's rights from day one. Children's needs and rights need to be dealt with at an early stage. The issue of early childhood development and child care gave rise to heated debate among witnesses before our Committee, although all agreed on the significant benefits that such initiatives entail for children. When discussing this issue, our Committee would like to note that references to early childhood care and education go beyond the question of "daycare" to include broader issues such as maternity and parental leave, prenatal supports and care, medical care, and primary education. Canada's provinces and territories are generally responsible for early childhood development and care policy, financing, and service provision, while the federal government provides early childhood development and care programs to specific populations (Aboriginal communities, military families, and new Canadians), as well as providing maternity and parental leave benefits and tax deductions for child care expenses.

The UN Committee on the Rights of the Child has criticized Canada's performance with respect to early childhood development and child care:

The Committee welcomes measures taken by the Government to provide assistance to families through expanded parental leave, increased tax deductions, child benefits and specific programmes for Aboriginal people. The Committee is nevertheless concerned at reports relating to the high cost of childcare, scarcity of places and lack of national standards.

The Committee encourages the State party to undertake a comparative analysis at the provincial and territorial levels with a view to identifying variations in childcare provisions and their impact on children and to devise a coordinated approach to ensuring that quality childcare is available to all children, regardless of their economic status or place of residence.²⁷⁵

A number of witnesses²⁷⁶ reiterated the fact that Canada is not in compliance with the Convention in this regard. They told us that Canada's early childhood services are provided by an uncoordinated patchwork of service providers,²⁷⁷ and elaborated on Canadian statistics, informing our Committee that there is a shortage of spaces for children ages six to 12 and for children with special needs. In 2004, only 15.5% of Canadian children under 12 had access to licensed/regulated child care space, while a 2006 Organisation for Economic Co-operation and Development report found that 24% of Canadian children up to six years of age had access to regulated spaces. That report referred to the number of Canadian three-year-olds in licenced/regulated spaces as "negligible."²⁷⁸

There is wide variation in access to child care spaces across the country. For example, Saskatchewan has spaces for under 5% of children, while in Quebec almost a third of children have access to a space. In fact, 43% of regulated spaces in Canada can be found in Quebec. Approximately 80% of child care spaces in Canada are organized through the non-profit sector.

²⁷⁵ Committee on the Rights of the Child, *Concluding Observations*, para. 38-39.

²⁷⁶ See in particular testimony of Susan Prentice, Barbara Byers and Martha Friendly.

²⁷⁷ Margaret Norrie McCain, J. Fraser Mustard and Stuart Shanker, *Early Years Study 2: Putting Science into Action*, Council for Early Childhood Development, March 2007, available at: [http://wwwFOUNDERS.net/fn/setup.nsf/\(ActiveFiles\)/EarlyYears2/\\$file/48590_Early_Years_2.pdf](http://wwwFOUNDERS.net/fn/setup.nsf/(ActiveFiles)/EarlyYears2/$file/48590_Early_Years_2.pdf).

²⁷⁸ Organisation for Economic Co-operation and Development, *Starting Strong II: Early Childhood Education and Care*, 2006; Martha Friendly, Coordinator, Childcare Resource and Research Unit, University of Toronto, brief submitted to Committee. See also Martha Friendly and Jane Beach, "Trends and Analysis," *Early Childhood Education and Care in Canada 2004*, April 2005, available at: www.childcarecanada.org/pubs/other/TandA/TRENDS_ANALYSIS.pdf

Emphasizing the ramifications of the shortage of child care spaces in Canada, the Committee was informed that two-thirds of women with children under the age of three, 75% of women with children between the ages of three and five, and 82% of women with children between the ages of six and 15 are in the labour force.²⁷⁹ These numbers are on the rise, and some solution to this growing need needs to be found if children are to be provided with the standard of care that they deserve.

Susan Prentice of the Child Care Coalition of Manitoba told us that parents often pay over \$7,000 per year for regulated child care spaces, and that in most provinces, a family's income must be well below the poverty line in order to become eligible for subsidies. The 2006 OECD report stated that such subsidies are accessed by only 22% of single parents and about 5% of married mothers from low-income families. In 2001, 36% of children residing outside of Quebec received such subsidies. **Witnesses made it clear to the Committee that poor children generally have less access to child care than affluent children. Fewer child care programs exist in low-income neighbourhoods, and they are generally of lower quality.**

Witnesses also cited the OECD report, telling the Committee that Canada is not living up to the OECD's standards with respect to child care. Canada invests only about 0.3% of its gross domestic product in early childhood services, while the OECD recommends 1%. Of the 14 OECD countries surveyed, public expenditure on early childhood services was lowest in Canada. Martha Friendly of the Childcare Resource and Research Unit at the University of Toronto commented that in terms of Canada's actions on early learning and child care "we fall between level 1, which is merely symbolic, and level 2, which is spurts of action that are not sustained."²⁸⁰ A March 2007 report released by the Council for Early Childhood Development also indicates that overall public spending on children aged zero to six is less than the amount that is spent on children once they enter school.²⁸¹

²⁷⁹ *Ibid.*; Barbara Byers, Executive Vice-President, Canadian Labour Congress, testimony before the Committee, 2 October 2006; Friendly, brief submitted to the Committee.

²⁸⁰ Martha Friendly, Coordinator, Childcare Resource and Research Unit, University of Toronto, testimony before the Committee, 29 January 2007.

²⁸¹ McCain, Mustard, Shanker, *Early Years Study 2*.

Experts laud the long-lasting benefits that high-quality care can have for children, particularly those from low-income families.²⁸² Benefits include enhanced cooperation skills, as well as cognitive and social competencies. Nathaniel Mayer-Heft, a student in Montréal, commented that children need to learn cooperation skills early in order to better manage issues of violence and bullying later in life. Good-quality care can also buffer a child from some long-term negative effects of growing up in poverty. This finding applies particularly to girls, whose school attendance may be interrupted by domestic responsibilities such as care of younger siblings.

Sue Rossi of the Community Action Program for Children in British Columbia told us that:

So many studies now show that if children thrive from the ages of zero to six, they have a remarkable success rate in finishing school, staying away from criminal activity, building healthy relationships and becoming contributing, healthy citizens. We need to break these cycles in degenerating parental skills.²⁸³

As noted by Barbara Byers and the Committee on the Rights of the Child in its General Comment on juvenile justice, investing in high-quality services for young children may have a profound impact on keeping youth out of the justice and child protection systems later in life.

This testimony convinced our Committee of the need to improve the early childhood development and child care system in Canada in order to bring this country into compliance with its obligations under the Convention. As noted by Adrienne Montani of the British Columbia Child and Youth Coalition, access to high-quality and affordable care and learning environments should be a right and entitlement for all children, rather than a privilege.

²⁸² Susan Prentice, Advocate, Child Care Coalition of Manitoba, testimony before the Committee, 18 September 2006; McCain, Mustard, Shanker, *Early Years Study 2*; UNICEF, “Early Childhood Care Key to Gender Equality,” 13 November 2006, available at: www.unicef.org/media/media_36554.html.

²⁸³ Sue Rossi, Community Action Program for Children, testimony before the Committee, 22 September 2006.

RECOMMENDATION 13

Pursuant to articles 18, 28, and 29 of the *Convention on the Rights of the Child*, the Committee recommends that the federal government meet with provincial and territorial governments to help coordinate the establishment of measurable standards and guidelines for delivering early childhood development and child care to children across the country, matched by adequate funding. Consultations should begin immediately, with proposed solutions to be presented to the Canadian public by July 2009.

Chapter 13 - Articles 26 and 27: Children in Poverty

The *Convention on the Rights of the Child* treats child poverty as an issue of grave importance that can significantly overlap with many other areas of concern that contribute to the vulnerability of children in society as a whole. In particular, articles 26 and 27 delve deeply into this issue. Article 26 discusses the right of a child to benefit from social security:

Art. 26(1) States Parties shall recognize for every child the right to benefit from social security, including social insurance, and shall take the necessary measures to achieve the full realization of this right in accordance with their national law.

(2) The benefits should, where appropriate, be granted, taking into account the resources and the circumstances of the child and persons having responsibility for the maintenance of the child, as well as any other consideration relevant to an application for benefits made by or on behalf of the child.

The right to an adequate standard of living and the state's obligations in this respect are dealt with in article 27:

Art 27(1) States Parties recognize the right of every child to a standard of living adequate for the child's physical, mental, spiritual, moral and social development.

(2) The parent(s) or others responsible for the child have the primary responsibility to secure, within their abilities and financial capacities, the conditions of living necessary for the child's development.

(3) States Parties, in accordance with national conditions and within their means, shall take appropriate measures to assist parents and others responsible for the child to implement this right and shall in case of need provide material assistance and support programmes, particularly with regard to nutrition, clothing and housing.

(4) States Parties shall take all appropriate measures to secure the recovery of maintenance for the child from the parents or other persons having financial responsibility for the child, both within the State Party and from abroad. In particular, where the person having financial responsibility for the child lives in a State different from that of the child, States Parties

shall promote the accession to international agreements or the conclusion of such agreements, as well as the making of other appropriate arrangements.

Ultimately, the Convention recognizes that parents and guardians have primary economic responsibility for children. However, in case of need, the Convention directs states to provide material assistance to children, either through the parents or directly to the children themselves.

As a first comment on this issue, the Committee finds it important to recognize that everybody has a different way of defining poverty. In this section, the Committee will focus on the need for Canada to comply with articles 26 and 27 of the Convention, and will deal with various witnesses' definitions of poverty, as well as those used in the studies they may refer to through this framework.

Witnesses emphasized to the Committee that child poverty is a serious issue in Canada. David Agnew, former President of UNICEF Canada, told us that in a 2005 UNICEF study on child poverty rates in OECD countries, Canada ranked 19th out of 26 countries, with 15% of Canadian children living in poverty. Campaign 2000's 2006 Report Card on Child and Family Poverty in Canada found that more than 1.2 million children – one out of every six children – still live in poverty in Canada.²⁸⁴ The number of children living in poverty has risen by 20% since 1989.²⁸⁵ The statistics are even more dire in British Columbia and Newfoundland and Labrador, where nearly one in four children live in poverty. Quebec is the only province where child poverty rates have consistently declined over the past 10 years.²⁸⁶ In the city of Toronto, one out of every three children under 14 lives in poverty – a number that becomes particularly compelling when one realizes that 80% of the Canadian population lives in cities.²⁸⁷

²⁸⁴ Campaign 2000, *Oh Canada! Too Many Children in Poverty for Too Long... 2006 Report Card on Child and Family Poverty in Canada*, 2006, available at: www.campaign2000.ca/rc/rc06/06_C2000NationalReportCard.pdf

²⁸⁵ Campaign 2000, *Decision Time for Canada: Let's Make Poverty History – 2005 Report Card on Child Poverty in Canada*, 2005, available at: www.campaign2000.ca/rc/rc05/05NationalReportCard.pdf

²⁸⁶ Campaign 2000, *2006 Report Card*.

²⁸⁷ Laurel Rothman, Director of Community Building and Social Reform, Family Services Association of Toronto, testimony before the Committee, 29 January 2007.

The consequences of child poverty are staggering. At a very basic level, Stephen Wallace of the Canadian International Development Agency noted that “[p]overty denies children their human rights at a critical stage in their development,”²⁸⁸ while Gilles Julien, President of the Fondation pour la promotion de la pédiatrie sociale, pointed out that the most vulnerable children are found in poorer communities across Canada. According to the 2006 Report Card on Child and Family Poverty in Canada, 27.7% of children with disabilities, 40% of Aboriginal children, 25% of children in First Nations communities, and 40.4% of immigrant children live in poverty (almost twice the national rate²⁸⁹). Yet Dr. Julien said that children in poor communities

do not have access to services which they need. Their basic rights are breached on a daily basis because they do not [have] access to what they need to develop normally... when you are poor, it is harder for you to uphold your rights.²⁹⁰

Most immediately, poverty can lead to social exclusion and other forms of marginalization. Although such is not always the case, Gilles Julien, Nicolas Steinmetz, and Adrienne Montani told our Committee that children in lower-income families tend to have poorer health, higher school drop-out rates and higher rates of hunger and malnutrition. Poorer families are also more likely to have higher numbers of special needs children and children in care, and more children at greater risk of abuse and accidental injury.²⁹¹

One of the greatest problems is that poverty rarely ends with one child – it becomes a continuous cycle from parent to child to parent to child. Krista Thompson told us about her observations through her work with Covenant House:

With respect to the young people we see, their parents have little or no education. Their parents survived in some of the same ways these children

²⁸⁸ Wallace testimony.

²⁸⁹ Sara L. Austin, *Legislative Measures for the Implementation of the Convention on the Rights of the Child: International Lessons Learned and Recommendations for the Government of Canada*, World Vision Canada, 20 November 2006, brief submitted to the Committee.

²⁹⁰ Julien testimony.

²⁹¹ See also Health Council of Canada, *Their Future is Now: Healthy Choices for Canada's Children & Youth*; R. Brian Howe and Katherine Covell, “Child Poverty in Canada and the Rights of the Child,” *Human Rights Quarterly*, Vol. 25, 2003.

survive. It is a cycle. It helps if you can put a shiv in the circle, which is improved living conditions, improved access to education.²⁹²

Too frequently, this cycle of poverty leaves children homeless. A report published by the Public Health Agency of Canada in 2006 estimated that 150,000 youth aged 15 to 24 are living on the streets in Canada every day. Boys double the number of girls living on the street.²⁹³

The problems associated with poverty are exacerbated for homeless youth. The Public Health Agency report notes that this is an extremely emotionally and physically vulnerable population with limited education or job skills, and frequent involvement with drugs or prostitution. More than half of the youth surveyed reported having spent time in a youth detention centre, prison or a detention facility; two-thirds of these were male and one-third female. Twenty per cent of respondents reported using injection drugs. Krista Thompson provided a particularly telling illustration of the vulnerability of youth living on the street:

Young people tell me they started to take crystal meth because they were afraid to fall asleep in the alley. They are homeless. They live in an alley. They will be raped, beaten or killed if they fall asleep. A \$5 hit of crystal meth will keep them awake for a day and a half. It is survival.²⁹⁴

She emphasized that such children are often entitled to services but they rarely receive them – “[m]any of them have simply gone beyond the reach.”²⁹⁵ Social workers across Canada are stretched so thin that they have neither the time nor the resources to deal with youth who are over 16. “[I]f a youth is 16, our social workers say, ‘You are old enough. I have eight-year-olds to worry about. I do not have enough time, money, or energy to deal with you, so off you go.’”²⁹⁶ She pointed out that although street youth create a huge demand for drug and alcohol treatment services, there is limited access to such services unless it is through private funding. Street youth often require lifelong

²⁹² Krista Thompson, Executive Director, Covenant House, testimony before the Committee, 22 September 2006.

²⁹³ Public Health Agency of Canada, *Street Youth in Canada: Findings from Enhanced Surveillance of Canadian Street Youth, 1999-2003*, March 2006, available at: www.phac-aspc.gc.ca/std-mts/reports_06/pdf/street_youth_e.pdf

²⁹⁴ Krista Thompson testimony.

²⁹⁵ *Ibid.*

²⁹⁶ *Ibid.*

support, but “[t]hat is not the role of a charitable organization who survives on donations. That is the role of society and government to provide, in some cases, life-long support to these young people who have been so damaged.”²⁹⁷

In its Concluding Observations, the Committee on the Rights of the Child echoed some of these concerns about child poverty levels in Canada, making it abundantly clear that effective solutions are needed, quickly, in order to bring Canada into compliance with the Convention:

Standard of Living

The Committee is encouraged to learn that homelessness was made a research priority by the Canada Mortgage and Housing Corporation, as the sources of data are limited. However, the Committee shares the concerns of the Committee on Economic, Social and Cultural Rights (E/C.12/1/Add.31, paras. 24, 46) which noted that the mayors of Canada’s 10 largest cities have declared homelessness to be a national disaster and urged the Government to implement a national strategy for the reduction of homelessness and poverty.

The Committee reiterates its previous concern relating to the emerging problem of child poverty and shares the concerns expressed by the Committee on the Elimination of Discrimination Against Women (CEDAW) relating to economic and structural changes and deepening poverty among women, which particularly affects single mothers and other vulnerable groups, and the ensuing impact this may have on children.

The Committee recommends that further research be carried out to identify the causes of the spread of homelessness, particularly among children, and any links between homelessness and child abuse, child prostitution, child pornography and trafficking in children. The Committee encourages the State party to further strengthen the support services it provides to homeless children while taking measures to reduce and prevent the occurrence of this phenomenon.

The Committee recommends that the State party continue to address the factors responsible for the increasing number of children living in poverty and that it develop programmes and policies to ensure that all families have adequate resources and facilities, paying due attention to the situation of single mothers, as suggested by CEDAW (A/52/38/Rev.1, para. 336), and other vulnerable groups...

²⁹⁷ *Ibid.*

Street Children

The Committee regrets the lack of information on street children in the State party's report, although a certain number of children are living in the street. Its concern is accentuated by statistics from major urban centres indicating that children represent a substantial portion of Canada's homeless population, that Aboriginal children are highly overrepresented in this group, and that the causes of this phenomenon include poverty, abusive family situations and neglectful parents.

The Committee recommends that the State party undertake a study to assess the scope and the causes of the phenomenon of homeless children and consider establishing a comprehensive strategy to address their needs, paying particular attention to the most vulnerable groups, with the aim of preventing and reducing this phenomenon in the best interest of these children and with their participation.²⁹⁸

Our Committee believes that, as noted by Adrienne Montani, **the way out of child poverty in Canada needs to be founded on universal solutions that reach all youth at risk, not only those who come to the attention of the government or social services, nor only the "poorest of the poor."**²⁹⁹ **This is the rights-based approach that underlies the entire *Convention on the Rights of the Child*. Our Committee notes that what is needed is a comprehensive and consistent approach to child poverty in Canada that uses the Convention as a yardstick for measuring success.**

A possible model for the kind of comprehensive response that this situation requires is offered by the social paediatrics model used by Gilles Julien and Nicolas Steinmetz. As stated in the brief they submitted to the Committee:

Social paediatrics is a child-centred total health approach that focuses on prevention and education of families in high-risk milieus. It strives to ensure that the child's rights and needs are respected and emphasizes the development, protection and physical, affective, social and intellectual stimulation of highest risk children. Every intervention in social paediatrics focuses on fostering closeness and exchanges between children and their parents, thus encouraging consensus and social and cultural integration within the family. Finally, it is based on using and pooling the

²⁹⁸ Committee on the Rights of the Child, *Concluding Observations*, para. 40-43 and 54-55.

²⁹⁹ Adrienne Montani, Provincial Coordinator, BC Child and Youth Coalition, testimony before the Committee, 22 September 2006.

resources of the family, scholastic, community and institutional networks that already exist within society.³⁰⁰

Gilles Julien noted that the respect for the *Convention on the Rights of the Child* fits well into this context:

[W]hen you read [the Convention], you basically find everything you need to set up a program which truly supports children in the community. It is complete. The convention is a source of inspiration for people like us who defend the rights of children when they are in school or in a hospital, when they do not have access to enough services in their community or to recreational opportunities, or when they need local protection. The convention is there to support us.

Generally speaking, when the convention is used that way, and we recently invoke it at the Tribunal: de quel droit on fait cela à un enfant? The convention states that children have the right to protection, to education, to go to a school which they are familiar with and which adapts to their need, and not vice versa. In our daily work, we can refer to the convention in almost any situation, which is inspiring, and which also makes our message also more powerful, which is very interesting...

For us, there is no doubt that the convention is a gift from heaven.³⁰¹

Social paediatrics is just one example of how the *Convention on the Rights of the Child* can be implemented practically and effectively in communities to make real differences in children's lives. Applying the approach of using, pooling and reinforcing existing resources, our Committee believes that governments can work with NGOs and communities to mitigate and reverse child poverty.

Ultimately, what is needed is a national poverty reduction strategy founded on the principles of the Convention. Working in consultation with provincial and territorial governments, the federal government should take measures to develop and fund a comprehensive and affordable housing strategy. Targeted funding could also be used to support organizations that assist street-involved youth and other at-risk children by providing neutral spaces, assistance with nutrition and shelter, addictions treatment, medical counselling, educational services, skills development and employment training.

³⁰⁰ Julien, brief submitted to the Committee.

³⁰¹ Julien testimony.

Child poverty is real and its dire consequences are manifested in children's daily lives. In one graphic example that brought this entire issue home to the Committee, Krista Thompson told us that at Covenant House:

We help a lot of kids get jobs, and we help them with pre-employment training and those kinds of things. I noticed that often when a kid is dressed up and has his shoes polished and we help him with his résumé, he has a hard time connecting with people. A lot of the kids do not smile very often. I thought it was because they were crabby and pissed off, and I do not blame them. In actual fact, they do not smile because their teeth are so bad they do not want to show anybody their mouth. This is a small thing it seems, but without a smile, a kid has a tough time connecting to the world.³⁰²

It is at this everyday level that the Convention can be used to make a difference.

RECOMMENDATION 14

Pursuant to articles 26 and 27 of the *Convention on the Rights of the Child*, the Committee recommends that the federal government develop a federal strategy to combat child poverty that should be put into effect as soon as possible, accompanied by clear goals and timetables. Among other things, such a plan should include preventative measures aimed at high-risk families and a comprehensive housing strategy.

³⁰² Krista Thompson testimony.

Chapter 14 - Articles 2, 23, 24, 33, and 39: Children's Health

A. INTRODUCTION

As already mentioned in Chapter 3, article 2 of the *Convention on the Rights of the Child* lays out the basic non-discrimination principle, calling for States Parties to respect and ensure the rights laid out in the Convention irrespective of a child's disability. In its General Comment on the rights of children with disabilities, the UN Committee on the Rights of the Child discusses this provision, stating that:

The explicit mentioning of disability as a prohibited ground for discrimination in article 2 is unique and can be explained by the fact that children with disabilities belong to one of the most vulnerable groups of children... Discrimination takes place – often de facto – regarding various aspects of the life and development of children with disabilities. As an example, social discrimination and stigmatization leads to their marginalization and exclusion and may even threaten their survival and development in the form of violence. Discrimination in service provision excludes them from education and denies them access to quality health and social services. The lack of appropriate education and vocational training discriminates against them by denying them job opportunities in the future. Social stigma, fears, overprotection, negative attitudes, misbeliefs and prevailing prejudices against children with disabilities remain strong in many communities leading to the marginalization and alienation of children with disabilities.³⁰³

A number of other Convention provisions also touch on the child's rights with respect to his or her health or disability. Article 23 deals specifically with the rights of disabled children:

Art. 23(1) States Parties recognize that a mentally or physically disabled child should enjoy a full and decent life, in conditions which ensure dignity, promote self-reliance and facilitate the child's active participation in the community.

(2) States Parties recognize the right of the disabled child to special care and shall encourage and ensure the extension, subject to available

³⁰³ Committee on the Rights of the Child, *General Comment No. 9: The Rights of Children with Disabilities*, unedited version, CRC/C/GC/9, 29 September 2006, para. 8.

resources, to the eligible child and those responsible for his or her care, of assistance for which application is made and which is appropriate to the child's condition and to the circumstances of the parents or others caring for the child.

(3) Recognizing the special needs of a disabled child, assistance extended in accordance with paragraph 2 of the present article shall be provided free of charge, whenever possible, taking into account the financial resources of the parents or others caring for the child, and shall be designed to ensure that the disabled child has effective access to and receives education, training, health care services, rehabilitation services, preparation for employment and recreation opportunities in a manner conducive to the child's achieving the fullest possible social integration and individual development, including his or her cultural and spiritual development.

(4) States Parties shall promote, in the spirit of international cooperation, the exchange of appropriate information in the field of preventive health care and of medical, psychological and functional treatment of disabled children, including dissemination of and access to information concerning methods of rehabilitation, education and vocational services, with the aim of enabling States Parties to improve their capabilities and skills and to widen their experience in these areas. In this regard, particular account shall be taken of the needs of developing countries.

This provision calls for the state to take measures to ensure that a child with disabilities can lead a full life in conditions that ensure his or her dignity, that promote self reliance, and that facilitate the child's active participation in the community. Article 23 refers to the right of a child with a disability to special care, and assistance for those responsible for his or her care. Such assistance must be appropriate to the child's condition, as well as to the circumstances of the parents or others caring for the child. The underlying message of this provision is that children with disabilities should be included as full members of society.³⁰⁴

Article 24 follows with a discussion of children's health and health services:

Art. 24(1) States Parties recognize the right of the child to the enjoyment of the highest attainable standard of health and to facilities for the treatment of illness and rehabilitation of health. States Parties shall strive to ensure that no child is deprived of his or her right of access to such health care services.

³⁰⁴ *Ibid.*

(2) States Parties shall pursue full implementation of this right and, in particular, shall take appropriate measures:

(a) To diminish infant and child mortality;

(b) To ensure the provision of necessary medical assistance and health care to all children with emphasis on the development of primary health care;

(c) To combat disease and malnutrition, including within the framework of primary health care, through, inter alia, the application of readily available technology and through the provision of adequate nutritious foods and clean drinking-water, taking into consideration the dangers and risks of environmental pollution;

(d) To ensure appropriate pre-natal and post-natal health care for mothers;

(e) To ensure that all segments of society, in particular parents and children, are informed, have access to education and are supported in the use of basic knowledge of child health and nutrition, the advantages of breastfeeding, hygiene and environmental sanitation and the prevention of accidents;

(f) To develop preventive health care, guidance for parents and family planning education and services.

(3) States Parties shall take all effective and appropriate measures with a view to abolishing traditional practices prejudicial to the health of children.

(4) States Parties undertake to promote and encourage international co-operation with a view to achieving progressively the full realization of the right recognized in the present article. In this regard, particular account shall be taken of the needs of developing countries.

The Convention then delves into specific health concerns with respect to children.

Article 33 deals with the issue of drug abuse, stating that:

Art. 33 States Parties shall take all appropriate measures, including legislative, administrative, social and educational measures, to protect children from the illicit use of narcotic drugs and psychotropic substances as defined in the relevant international treaties, and to prevent the use of children in the illicit production and trafficking of such substances.

Finally, article 39 deals with rehabilitative care for children victims of various forms of violence.

Art. 39 States Parties shall take all appropriate measures to promote 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. Such recovery and reintegration shall take place in an environment which fosters the health, self-respect and dignity of the child.

B. CHILD HEALTH IN CANADA

Compared to many other countries, Canada's children have a high standard of health and health services. Canada was recently ranked sixth among OECD countries in terms of children's health and safety,³⁰⁵ and fifth out of 125 countries in terms of children's health status.³⁰⁶ However, the Committee on the Rights of the Child still notes some grave concerns. In its Concluding Observations, the Committee states that:

Health and health services

The Committee is encouraged by the commitment of the Government to strengthening health care for Canadians by, inter alia, increasing the budget and focusing on Aboriginal health programmes. However, the Committee is concerned at the fact, acknowledged by the State party, that the relatively high standard of health is not shared equally by all Canadians. It notes that equal provincial and territorial compliance is a matter of concern, in particular as regards universality and accessibility in rural and northern communities and for children in Aboriginal communities. The Committee is particularly concerned at the disproportionately high prevalence of sudden infant death syndrome and foetal alcohol syndrome disorder among Aboriginal children.

The Committee recommends that the State party undertake measures to ensure that all children enjoy equally the same quality of health services, with special attention to indigenous children and children in rural and remote areas.

Adolescent health

The Committee is encouraged by the average decline in infant mortality rates in the State party, but is deeply concerned at the high mortality rate among the Aboriginal population and the high rate of suicide and substance abuse among youth belonging to this group.

³⁰⁵ UNICEF Innocenti Research Centre, *Child Poverty in Perspective: An Overview of Child Well-Being in Rich Countries*, Report Card No. 7, 2007.

³⁰⁶ See Health Council of Canada, *Their Future is Now: Healthy Choices for Canada's Children & Youth*, June 2006, p. 2, available at: www.healthcouncilcanada.ca/docs/rpts/2006/HCC_ChildHealth_EN.pdf

The Committee suggests that the State party continue to give priority to studying possible causes of youth suicide and the characteristics of those who appear to be most at risk, and take steps as soon as practicable to put in place additional support, prevention and intervention programmes, e.g. in the fields of mental health, education and employment, that could reduce the occurrence of this tragic phenomenon.³⁰⁷

C. SPECIAL NEEDS CHILDREN

Witnesses appearing before our Committee on health issues focussed their comments primarily on special needs children, particularly those with autism and foetal alcohol syndrome disorder (FASD). This is clearly an area of deep concern to many Canadians, and it is one that takes on particular significance following the adoption of the *Convention on the Rights of Persons with Disabilities*³⁰⁸ by the UN General Assembly in December 2006. The Committee commends the Canadian government for signing this instrument in March 2007, and eagerly anticipates the government's next steps towards ratification and implementation. The Committee also acknowledges the work of the Standing Senate Committee on Social Affairs, Science and Technology's March 2007 report on autism, *Pay Now or Pay Later: Autism Families in Crisis*.³⁰⁹

One of the primary problems faced by special needs children in Canada appears to be the need for more resources to pay for specialized treatments and services. Witnesses appearing before our Committee told us that parents of special needs children bear a particular financial burden, as they must somehow find the money to pay for their child's treatments. Parents are often obliged to move to larger city centres where specialized treatments and services are more readily available.

Yude Henteleff pointed out that legislation with respect to specialized health services for children in Canada is often qualified by the phrase "subject to available resources," or hinges on the ability of parents to demonstrate undue hardship. He called this an "economic rationalization for discrimination,"³¹⁰ and pointed out that such qualifications are not usually attached to the provision of services to non-special needs children. He

³⁰⁷ Committee on the Rights of the Child, *Concluding Observations*, para. 34-37.

³⁰⁸ A/RES/61/106.

³⁰⁹ Available at: <http://www.parl.gc.ca/39/1/parlbus/commbus/senate/com-e/soci-e/rep-e/repfinmar07-e.pdf>.

³¹⁰ Yude Henteleff, lawyer, testimony before the Committee, 18 September 2006.

said that this “means there is a standard for special needs children and one for non-special needs children. What is the standard? The standard is an economic, not a human rights standard.”³¹¹ Making such distinctions is a clear violation of the *Convention on the Rights of the Child*.

Birgitta von Krosigk described the dilemma created by dealing with special needs children through a separate funding regime, arguing that these children are particularly vulnerable and need to be put on a level playing field:

We are all supposed to be full citizens of Canada. It should not be that we have this pie of money, which is the public money, public taxpayer's money, and we set aside a small portion here that is supposed to go to disabled people and then the disabled people get to fight over the crumbs. We should look at it in a more wholesome picture and say what is good for society... I find it troublesome, the notion that those of us who are able-bodied and have resources have some kind of entitlement to government resources, while the people who are most vulnerable have to justify their place at the table.³¹²

Ms. von Krosigk was involved as a lawyer in *Auton (Guardian ad litem of) v. British Columbia (Attorney General)*,³¹³ a 2004 Supreme Court of Canada decision which held that the lack of funding for all medically required treatment in British Columbia did not violate the Charter equality rights of the infant petitioners who suffered from autism and required a specific therapy that was not funded by the government at the time of trial.

Witnesses also told our Committee about problems of treatment accessibility. Looking at children with autism in particular, Yvette Ludwig of Families for Effective Autism Treatment told us that there are not enough scientifically validated programs for children with special needs. The programs that exist have long waiting lists, and once a child is accepted, the family then has to shoulder significant financial burdens to follow through with treatments. Witnesses told us that access to programs is inconsistent, not just between provinces where cut-off ages for treatment vary (as health care is an area of provincial jurisdiction), but also between regions within a province. Parents of children who live in more remote regions, or simply regions where no scientifically validated

³¹¹ *Ibid.*

³¹² Birgitta von Krosigk, lawyer, testimony before the Committee, 21 September 2006.

³¹³ [2004] 3 S.C.R. 657.

programs exist, often have to move their entire family to be closer to the services, or consider sending their child to live with others so he or she is closer to those services. This adds substantially to the financial burden taken on by parents of special needs children and may even lead to the denial of treatment to some.

Another issue that was particularly emphasized by witnesses was the need for early intervention funding and programs for special needs children. Researchers are rapidly discovering that becoming involved in children's lives early can make substantial differences to treatment of their special needs. Stuart Shanker of York University noted that currently about 50% of children with autism in Ontario are not diagnosed until the age of five, at which time they require intensive therapy, which is "very costly and not terribly effective."³¹⁴ However, he said that in about 84% of cases, an autistic child who receives treatment by the age of three can be restored to a healthy brain development trajectory. Doctors have also recently claimed that children with FASD are able develop at the same level as non-FASD children if they receive constant mental stimulation and nurturing in the first two years of their life.³¹⁵

In terms of creating specialized education environments for children with special needs, the Committee on the Rights of the Child noted in its General Comment on children with disabilities, that children with disabilities have the same right to education as other children and should be allowed to enjoy this right without discrimination. However, witnesses appearing before our Committee expressed differing views on whether special needs children should be fully integrated in the public education system or whether they should have specialized services designed to meet their needs.

Parents of special needs children told us that the problem generally begins when a child with special needs is put in a general classroom. The teacher may find that he or she cannot adequately meet the child's needs so a special teaching assistant is hired, or all special needs children within that school or area are grouped together in a segregated classroom setting that can tailor to their needs. However, these parents told us that most

³¹⁴ Stuart Shanker, Professor, York University, testimony before the Committee, 29 January 2007.

³¹⁵ Tom Blackwell, "Ontario MD Hails Fetal-Alcohol 'Breakthrough,'" *National Post*, 9 September 2006, p. A6.

often children in segregated settings do not get taught the general curriculum. They argued that they do not want their children isolated, but want them to live a typical experience, and to have the opportunity for a richer life. Emphasizing the issue of resource allocation, Gail Wilkinson of Families for Effective Autism Treatment told our Committee that by segregating special needs children “[w]e are really marginalizing the involvement of those children and families in society.”³¹⁶ She and her colleague also raised the issue of backlash from parents of non-special needs children, who have accused special needs children of “stealing” funding from their children.

Yet Yude Henteleff criticized the lack of special classrooms for special needs children due to funding cuts. He argued that education needs to be provided to special needs children in a non-discriminatory manner, with equal access to educational programs and to resources. He said that the ideal solution for special needs children is neither total inclusivity nor total segregation:

[T]here is nothing wrong with inclusiveness in the sense that there should be a greater opportunity for special needs children and non-special needs children to be together and learn from each other. However, that does not mean to say that there should be only one means by which to meet the needs of all children. The inclusive classroom is not the place for all children. There have to be variables on that theme.³¹⁷

The Committee on the Rights of the Child echoed this perspective in its General Comment, stating that the Committee

recognizes the need for modification to school practices and for training of regular teachers to prepare them to teach children with diverse abilities to ensure that they achieve positive educational outcomes.

As children with disabilities are very different from each other, parents, teachers and other specialized professionals have to help each individual child to develop his or her ways and skills of communication, language, interaction, orientation and problem solving which best fit the potential of this child. Everybody, who furthers the child's skills, abilities and self-development, has to precisely observe the child's progress and carefully listen to the child's verbal and emotional communications in order to

³¹⁶ Gail Wilkinson, Families for Effective Autism Treatment, testimony before the Committee, 20 September 2006.

³¹⁷ Henteleff testimony.

support education and development in a well-targeted and most appropriate manner...

Inclusive education should be the goal of educating children with disabilities. However, placement and type of education must be dictated by the individual educational needs of the child, since the education of some of children with disabilities requires a kind of support which the regular school cannot offer. In general, schools with appropriate accommodation and individual support should be the goal of educating children with disabilities... However, the Committee underlines that the extent of inclusion may vary. A continuum of services and programme options must be maintained in circumstances where inclusive education is not feasible to achieve in the immediate future or where the capacity of the child with disability cannot be promoted "to its fullest potential".

... At its core, inclusive education is a set of values, principles, and practices that seeks meaningful, effective, and quality education for all students, that does justice to the diversity of learning conditions and requirements not only of children with disabilities, but for all students... Inclusion may range from full-time placement of all students with disabilities into one regular classroom or placement into the regular classroom with varying degree of inclusion including a certain portion of special education. It is important to understand that inclusion should not be understood nor practiced as simply integrating children with disabilities into the regular system regardless of their challenges and needs. Close cooperation among special educators and regular educators is essential. Schools' curricula must be re-evaluated and developed to meet the needs of children with and without disabilities. Modification in training programmes for teachers and other personnel involved in the educational system must be achieved in order to fully implement the philosophy of inclusive education.³¹⁸

Finally, our Committee heard that special needs children are often particularly vulnerable to abuse and neglect – sometimes within their families, and frequently among their peers. Yvette Ludwig told us that special needs children are often misunderstood and seen as "different," thus they can more easily fall prey to bullying and other forms of marginalization. Faye Mishna of the University of Toronto also indicated that children with learning disabilities and special needs report a higher rate of being bullied than their non-special needs peers. A recent highly publicized example of such abuse arose in late

³¹⁸ Committee on the Rights of the Child, *General Comment No. 9*, para. 62-63 and 66-67.

2006 in Winnipeg, where a 14-year-old boy with spina bifida was locked in a burning shed by his peers.³¹⁹

In its General Comment, the Committee on the Rights of the Child noted that girls with disabilities may be even more vulnerable to such discrimination, and that states should pay particular attention to this situation in order to ensure adequate protection, access to appropriate services, and the full inclusion of girls with disabilities in society. This perspective was echoed by Sudabeh Mashkuri of the Metro Action Committee on Violence Against Women and Children. She told us that girls with disabilities experience sexual abuse at a rate that is four times higher than the national average.

Again respecting the fact that both health and education are largely within provincial jurisdiction, the Committee nonetheless finds that Canada needs to bring itself into fuller compliance with the *Convention on the Rights of the Child* with respect to special needs children. **There is a need for the federal government to bring the provinces and territories together to discuss a variety of issues with regard to special needs children.** Yude Henteleff went so far as to suggest the creation of a federal-provincial-territorial committee that could work in consultation with NGOs, with real powers to assure the implementation of proposed solutions. As stated by the Committee on the Rights of the Child in its General Comment, states need to develop and effectively implement policies aimed at ensuring that children with disabilities, and their guardians, receive the special care and assistance to which they are entitled. This cannot happen in Canada without broad cooperation and consultation.

Based on testimony before us, **our Committee suggests that these consultations include the question of resources.** The Committee on the Rights of the Child has said that provision of special care and assistance should be free whenever possible. **Discussions among governments should focus on best practices in terms of funding arrangements, accompanied by the proposal of concrete initiatives to improve service provision to special needs children.**

³¹⁹ See Joe Friesen, "Children Lock Disabled Teen in Burning Woodshed," *The Globe & Mail* [Toronto], 17 October 2006.

Such discussions should also touch on the varying levels of services available in each jurisdiction and the potential for harmonization based on a consideration of best practices. Finally, the consultations should look at the need for effective services delivered by properly trained professionals in the school system and in other child service and support systems, as well as education programs for parents and health professionals to assist them with early identification of special needs children.

Our Committee would like to see this consultation process involve special needs children themselves – not only governments, advocacy groups, scientists, and service providers. Douglas McMillan of the IWK Health Centre in Nova Scotia told us that the voices of disabled children are not heard in Canada. Yet, as noted by the Canada Health Council, effective programs for youth health involve young people in identifying needs and in planning and delivery of services.³²⁰ Our Committee notes that when young people speak, stereotypes can more easily be broken. Children with special needs could likely add much to this consultation process. As stated by Bridget Cairns of the Prince Edward Island Association for Community Living, “[t]hat is basically what every parent of a child with a disability wants: their child to have their own voice, and if they do not have the capacity to speak, that they are supported to express their views.”³²¹

RECOMMENDATION 15

Pursuant to articles 2, 23, 24, 33, and 39 of the *Convention on the Rights of the Child*, the Committee recommends that the federal, provincial, and territorial governments implement an improved process to improve services to special needs children by July 2008. Working to resolve this crisis on an immediate and on-going basis, governments should develop a consultation process to with advocacy groups, service providers, health professionals and special needs children. Early intervention should be a key focus of these consultations.

³²⁰ Health Council of Canada, *Their Future is Now: Healthy Choices for Canada's Children & Youth*.

³²¹ Bridget Cairns, Director, Prince Edward Island Association for Community Living, testimony before the Committee, 15 June 2005.

Chapter 15 - Article 2: Sexual Orientation

Nothing in the *Convention on the Rights of the Child* deals specifically with issues of sexual orientation as they relate to children. Nevertheless, although article 2, the non-discrimination provision, does not explicitly refer to sexual orientation, it does refer to “other status.” As such, the rights of sexual minority children in Canada may be protected under this rubric: States Parties must respect and ensure the rights set out in the Convention irrespective of a child’s sexual orientation.

The issue of sexual minority children in Canada often goes unnoticed in the larger battle surrounding sexual orientation in the adult world. Yet a large number of children do struggle with this issue on a daily basis. Often they are marginalized by their own fear and confusion, as well as by bullying and violence perpetrated against them by their peers and even families.

Kristopher Wells of the University of Alberta told our Committee that one of the only studies to have looked at the sexual orientation and gender identity of youth on a national scale, a 2004 survey of 135 youth across Canada aged 13 to 29, found that 3.5% of respondents identified themselves as belonging to a sexual minority. In addition, up to 11% of respondents were questioning their heterosexuality, stating that they had experimented with members of the same sex.

In terms of youth acceptance of alternate sexual orientation, 62% of respondents stated that they were comfortable or completely comfortable with lesbian, gay, bisexual and transgendered issues. In fact, as noted by Chris Buchner of GAB Youth Services in Vancouver, because homosexual adult males are becoming more mainstream in our society, more male youth are coming out at an earlier age. Social acceptance of homosexuality is not universal, however. Mr. Buchner told us that social acceptance of

lesbianism is not as pronounced as that of male homosexuality, and that female youth may not yet have reached this same comfort level in terms of coming out to their peers.

Despite the prevalence of lesbian, gay, bisexual or transgendered youth in our society, as well as acceptance by many youth and adults, discrimination abounds, and often in violent forms. The UN Study on Violence Against Children found that sexual minority youth tend to face higher rates of sexual harassment than other young people, and Faye Mishna of the University of Toronto told us that lesbian, gay, bisexual and transgendered youth are significantly more likely to experience verbal and physical harassment within schools and the broader community. In a brief submitted to the Committee, she noted that 84% of sexual minority youth experience verbal harassment, and 25% report physical harassment. Kristopher Wells cited statistics noting that some 28% of 15- to 19-year-olds had witnessed acts of violence towards a person belonging to a sexual minority. He noted that much of this violence is directed towards boys:

We see, particularly in high schools and with young people, that most of the violence is directed toward young men, simply because young lesbians or questioning women are often seen at the service of masculinity. They are seen as an idealized fetish of desire.

It is not a threat to a young person's masculinity to see two women kissing, but it is a threat to see two men kissing, or to be seen as objects of affection because it is a direct threat to them, their own identity.³²²

Others, such as Fiona Kelly of the University of British Columbia and Chris Buchner told our Committee that male and female sexual minority youths are equally subject to bullying, but that it expresses itself in different ways. Fiona Kelly said that:

[Y]ou almost have to go beyond sexuality to understand bullying in schools and how bullying is perpetrated against young women. It is a policing of gender in so many instances, and so for a young woman who is coming out, and ultimately kind of threatening the gender, then the bullying is often sexual. It is reinforcing heterosexuality or correct gender performance through sexual harassment of young women.³²³

³²² Kristopher Wells, Department of Educational Policy Studies, Faculty of Education, University of Alberta, testimony before the Committee, 20 September 2006.

³²³ Fiona Kelly testimony.

The consequences of psychological and physical bullying can be disastrous for youth who already may feel marginalized in their family, in their school, and in society more broadly. Faye Mishna told us that sexual minority youth are less likely to seek help from their peers, school professionals or parents due to fear of homophobic reactions and further victimization. Sexual minority youth have a greater tendency to drop out of school or support groups, to run away from home, and to turn to drugs or alcohol abuse or even prostitution as coping mechanisms to deal with stigma, shame, bullying and victimization. Kristopher Wells told the Committee that sexual minority youth are also prone to depression and high rates of suicide attempts or ideation: “The suicide statistics are absolutely staggering for this community; two to three times higher than that of their heterosexual peers to contemplate or attempt suicide.”³²⁴

One telling illustration of the effects of such marginalization appears in statistics showing that 11% to 35% of street-involved youth identify themselves as belonging to a sexual minority.³²⁵ Chris Buchner pointed out that one of the causes of this high percentage is the difficulty in finding adequate housing for sexual minority youth who are homeless. He said that a lot of youth programs are “Christian based” and sexual minority youth often feel uncomfortable with such services. GAB Youth Services, which is oriented towards sexual minority youth, has been trying to adjust to the specific needs of these clients. Staff at the organization noticed that it tended to receive more male youth during drop-in times, while females used its other services. As a result, GAB Youth Services has created a female-only group to deal with this situation.

The witnesses appearing on the issue of sexual minority children had a number of valuable proposals for addressing these problems and bringing Canada into closer compliance with its Convention obligations to sexual minority youth. The Committee supports emphasis on **the need for more intervention in the school system, including awareness-raising about sexual orientation issues and counselling for sexual minority or questioning youth.** Kristopher Wells told our Committee that school counsellors are well placed to ensure that troubled youth find the support they need and

³²⁴ Wells testimony.

³²⁵ *Ibid.*

access to counselling or other resources as required. As an example, he cited a British Columbia survey of 77 youth, 39% of whom told a teacher or school counsellor that they were gay or lesbian. The school offers a critical opportunity for intervention in children's lives that cannot be overlooked. Mr. Wells pointed out that "if young people do not get support at home, where do they turn? They often turn to their schools. However, if they do not get support at their schools, they frequently turn to the streets where they try to find any source of support simply to survive."³²⁶

Yet intervention in schools will not likely be enough. Particularly marginalized sexual minority youth will continue to fall through the cracks, and many may still end up on the streets. **The federal government should target funding towards service providers that create support and housing spaces for street-involved youth, with particular emphasis on sexual minority youth, to help them regain their footing in life.**

RECOMMENDATION 16

Pursuant to article 2 of the *Convention on the Rights of the Child*, the Committee recommends that the federal government act to fill the significant gaps in knowledge and statistics with respect to sexual minority youth and gender differences therein.

RECOMMENDATION 17

Pursuant to article 2 of the *Convention on the Rights of the Child*, the Committee recommends that all policies and strategies implemented by the federal government with respect to youth take into account the specific needs of sexual minority youth.

³²⁶ *Ibid.*

Chapter 16 - Articles 2 and 30: Aboriginal Children

A. INTRODUCTION

Articles 2 and 30 of the *Convention on the Rights of the Child* are the provisions with the most direct impact on the rights of Aboriginal children in Canada. Article 2 calls on states to respect and ensure the rights laid out in the Convention irrespective of the child's race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status. All of these categories are applicable to Aboriginal children in one form or another.

Article 30 is more specific, outlining the importance of not denying indigenous children the right to enjoy their culture in community with other members of their group, and to profess and practise their own religion and language.

Art. 30 In those States in which ethnic, religious or linguistic minorities or persons of indigenous origin exist, a child belonging to such a minority or who is indigenous shall not be denied the right, in community with other members of his or her group, to enjoy his or her own culture, to profess and practice his or her own religion, or to use his or her own language.

Beyond these more specific provisions, every article of the Convention also applies to Aboriginal children as children generally, rather than as specific to their community. Because of the specific constitutional status of Aboriginal children³²⁷ in Canada, the federal government sometimes applies these more general provisions in different ways. For example, the federal government has entered a reservation with respect to article 21 of the Convention, as discussed in Chapter 4, section B1. The purpose of this reservation

³²⁷ As noted in Pamela Gough, Cindy Blackstock and Nicholas Bala, *Jurisdiction and Funding Models for Aboriginal Child and Family Services Agencies*, Centre of Excellence for Child Welfare, 2005, available at: <http://www.cecw-cepb.ca/DocsEng/JurisdictionandFunding30E.pdf>: “The terms ‘First Nations’ and ‘Indian’ refer to those persons identified and registered as ‘Indians’ under the federal Indian Act. These people are often referred to as ‘Status Indians.’ The term ‘Aboriginal’ is broader. The Constitution Act of 1982 defines Aboriginal people as Indians, Inuit, and Métis. As the term is commonly used today, however, Aboriginal includes people with registered and nonregistered Indian Status, Inuit, and Métis.” Our Committee has attempted to remain true to the terminology used by witnesses, often using the term “Aboriginal” in a broad sense throughout this report.

is to ensure that recognition of customary forms of care among Aboriginal peoples in Canada is not precluded by the Convention requirement that adoptions be authorized by competent authorities, in accordance with applicable laws and procedures. The federal government's statement of understanding also notes that the government's measures to implement the Convention in Canada must take into account the minority rights outlined in article 30.

B. ABORIGINAL CHILDREN IN CANADA

In Canada, although provincial governments provide child welfare services for the general population, the federal government has jurisdiction over "Indians, and Lands reserved for the Indians" as per section 91(24) of the *Constitution Act, 1867*,³²⁸ and provides funding for First Nations child and family services agencies under Directive 20-1. These agencies provide culturally sensitive services to children on-reserve and are under First Nations control; however, they are mandated in accordance with provincial standards and legislation. Some First Nations child and family services agencies have expanded to provide services to First Nations children living off-reserve, but otherwise First Nations children living off-reserve receive services from provincial authorities. Aboriginal children living off-reserve are under the jurisdiction of provincial authorities with respect to child care and protection, although some First Nations child and family services agencies have also expanded to encompass off-reserve Aboriginal children living in particular areas within their scope.³²⁹

Among all the themes discussed in this report, serious concerns about Aboriginal children in Canada were perhaps those most emphasized by witnesses. The Committee heard that Aboriginal children make up one of the most marginalized and vulnerable

³²⁸ Note, however, that section 88 of the *Indian Act* discusses the application of general provincial laws to First Nations people: "Subject to the terms of any treaty and any other Act of Parliament, all laws of general application from time to time in force in any province are applicable to and in respect of Indians in the province, except to the extent that those laws are inconsistent with this Act or the *First Nations Fiscal and Statistical Management Act*, or with any order, rule, regulation or law of a band made under those Acts, and except to the extent that those provincial laws make provision for any matter for which provision is made by or under those Acts."

³²⁹ Sandra Ginnish, Director General, Treaties, Research, International and Gender Equality Branch, Indian Affairs and Northern Development Canada, testimony before the Committee, 5 June 2006; Gough, Blackstock and Bala, *Jurisdiction and Funding Models for Aboriginal Child and Family Services Agencies*.

categories of children in Canada, overrepresented in a wide variety of areas. As noted in a brief submitted by World Vision Canada, although Canada consistently ranks among the top countries on the UN's Human Development Index, Canada's ranking drops to 78th when the Index isolates the economic and social well-being of Canada's Aboriginal population.

Aboriginal children are disproportionately living in poverty and involved in the youth criminal justice and child protection systems. Aboriginal children also face significant health problems in comparison with other children in Canada, such as higher rates of malnutrition, disabilities, drug and alcohol abuse, and suicide. Specific concerns with respect to Aboriginal children appear throughout the Concluding Observations of the Committee on the Rights of the Child. The Committee also devoted two paragraphs to this specific issue:

The Committee welcomes the Statement of Reconciliation made by the Federal Government expressing Canada's profound regret for historic injustices committed against Aboriginal people, in particular within the residential school system. It also notes the priority accorded by the Government to improving the lives of Aboriginal people across Canada and by the numerous initiatives, provided for in the federal budget, that have been embarked upon since the consideration of the initial report. However, the Committee is concerned that Aboriginal children continue to experience many problems, including discrimination in several areas, with much greater frequency and severity than their non-Aboriginal peers.

The Committee urges the Government to pursue its efforts to address the gap in life chances between Aboriginal and non-Aboriginal children. In this regard, it reiterates in particular the observations and recommendations with respect to land and resource allocation made by United Nations human rights treaty bodies, such as the Human Rights Committee (CCPR/C/79/Add.105, para. 8), the Committee on the Elimination of Racial Discrimination (A/57/18, para. 330) and the Committee on Economic, Social and Cultural Rights (E/C.12/1/Add.31, para. 18). The Committee equally notes the recommendations of the Royal Commission on Aboriginal Peoples and encourages the State party to ensure appropriate follow-up.³³⁰

³³⁰ Committee on the Rights of the Child, *Concluding Observations*, para. 58-59.

Brent Parfitt referred to the treatment of Aboriginal children in Canada as a “glaring area, and one that I am deeply embarrassed about.”³³¹

Witnesses echoed the UN Committee’s concerns, expressing frequent frustration with the situation of Aboriginal children. Maxwell Yalden, former member of the UN Human Rights Committee, said that “the Convention on the Rights the Child, insofar as it applies to Aboriginal children... shows us to be in serious breach.”³³² Kearney Healy expressed fear “that people are not willing to commit to the development of Aboriginal children.”³³³ Cindy Blackstock of the First Nations Child and Family Caring Society of Canada provided our Committee with some of the most compelling testimony with respect to Aboriginal children. She said that:

In Canadian society, we have normalized the risk to Aboriginal children. We no longer question the fact that 30 per cent of the kids in child welfare care are Aboriginal, or that 50 per cent of the young people who are being sexually exploited are Aboriginal. It is as though that is the way things have been and we assume that is the way things are in society, even when we are faced with an opportunity to make a difference and reduce those numbers. We have normalized it, which has taken away from the tragedy that it is. Each one of these young people should be given a full opportunity to make a difference...

[T]he shortfall in the current federal funding formula... is \$109 million per year for First Nations children on reserves. This is a shortfall in meeting the bare comparability of what is provided to non-Aboriginal children. This is not to make up for the impacts of residential school, but to ensure that these children have the same opportunity to live safely in their homes – \$109 million.³³⁴

The Committee recognizes that the protection of Aboriginal children’s rights – and thus the protection of Aboriginal communities’ future – is an issue of primary importance for all Canadians and an issue of fundamental concern with respect to the *Convention on the Rights of the Child*. Aboriginal and non-Aboriginal communities are destined to co-

³³¹ Parfitt testimony.

³³² Yalden testimony.

³³³ Healy testimony.

³³⁴ Cindy Blackstock, Executive Director, First Nations Child and Family Caring Society of Canada, testimony before the Committee, 29 May 2006.

exist “in perpetuity.”³³⁵ For all the lives at stake, “[t]he cost of doing nothing... is enormous.”³³⁶ Cindy Blackstock reiterated this point, telling our Committee that “[b]y doing nothing, I think we put our own moral credibility as a nation at risk.”³³⁷

1. Child Protection Issues

Government faces many priorities about its budget every day and it is difficult to make decisions, but surely abused and neglected children should rank near the top of those priorities. You have a chance to make a difference. I hope Canada will.³³⁸

One of the most prominent and recurring themes with respect to Aboriginal children in Canada is their disproportionate representation within the child welfare system. A report released by the First Nations Child and Family Caring Society of Canada in August 2005 noted that between 1995 and 2001, the number of registered Indian children entering care rose by 71.5% nationally.³³⁹ The organization’s 2005 *Wen:de* report found that there are three times more First Nations children in care now than at the height of the residential schools era in the 1940s.³⁴⁰ Cindy Blackstock told us that as of May 2005, 10.23% of all Status Indian children were in care, compared to 0.67% of non-Aboriginal children.³⁴¹ According to Jennifer Lamborn of the Native Women’s Association of Canada, 30% to 40% of all children in care in Canada are Aboriginal. The statistics vary among the provinces. The situation is particularly dire in British Columbia, where over

³³⁵ The Honourable Andy Scott, Minister of Indian Affairs and Northern Development, testimony before the Committee, 26 September 2005.

³³⁶ Jonathan Thompson, Director, Social Development, Education and Languages, Assembly of First Nations, testimony before the Committee, 19 June 2006.

³³⁷ Blackstock testimony, 29 May 2006.

³³⁸ *Ibid.*

³³⁹ First Nations Child and Family Caring Society of Canada, *UNCRC Day of General Discussion: Children Without Parental Care – The Chance to Make a Difference for this Generation of Indigenous Children: Learning from the Lived Experience of First Nations Children in the Child Welfare System in Canada*, 16 August 2005, available at: www.fncaringociety.com/docs/UNCRCDaySeparatedChildren.pdf

³⁴⁰ First Nations Child and Family Caring Society of Canada, *Wen:de – We are Coming to the Light of Day*, 2005, available at: www.fncfcs.com/docs/WendeReport.pdf

³⁴¹ The Assembly of First Nations’ *Leadership Action Plan on First Nations Child Welfare* indicates that First Nations children are placed in care at a rate of 1 in 10, while non-Aboriginal children are placed in care at a rate of 1 in 200. That document notes that 27,000 First Nations children are in care, while the federal government places the number of First Nations children in care on-reserve at 9,000 (Bill Curry, “Cash Not Solution to Natives’ Plight: Prentice,” *The Globe and Mail*, 6 February 2007).

50% of children in permanent care are Aboriginal,³⁴² and in Saskatchewan and Manitoba where 80% of children in care are Aboriginal.³⁴³

Cindy Blackstock and Jennifer Lamborn noted that poverty, inadequate housing, and substance abuse are key contributors to this overrepresentation of Aboriginal children in the welfare system. They also, however, place a significant amount of the blame on the federal government's funding formula. Ms. Blackstock informed our Committee that while the provinces usually provide funding to welfare authorities that allows them to exhaust every alternative before considering removal of a child from the home, there is no such federal funding for First Nations children – removal remains the only funded option. The First Nations Child and Family Caring Society's August 2005 report found that the Department of Indian Affairs and Northern Development provides 22% less funding per child to First Nations child and family services agencies than the average province provides. The report noted that a primary area of inadequate funding is "least disruptive measures," a statutory range of services provided to children and youth at significant risk of maltreatment that allows them to remain safely in their homes. Ms. Blackstock told us that:

It is important to understand what the [federal] formula does fund. It provides unlimited funding for First Nations child welfare agencies to remove children from their homes. It is then that you assume that removal is, of course, a last resort. It is for every other child in the country, but not for First Nations children on reserve, because the department provides next to no funding for families to safely care for their children, even though, one, it is the right thing for the situation these children are in and, two, it also makes the most economic sense. Many of the First Nations agencies will tell you that it is not a problem to get \$300 a day to put a child into foster care, but try to give \$25 to a family so they can afford to feed the child and keep him or her safely in their home, and it is not possible under the current formula.³⁴⁴

The August 2005 report noted that the number of children in care could be reduced if adequate and sustained funding for least disruptive measures was provided by the Department of Indian Affairs and Northern Development. In an attempt to enforce a

³⁴² Milowsky testimony.

³⁴³ Blackstock testimony, 29 May 2006; Marilyn Hedlund, Executive Director, Child and Family Services, Government of Saskatchewan, testimony before the Committee, 19 September 2006.

³⁴⁴ Blackstock testimony, 29 May 2006.

solution to such funding concerns, the Assembly of First Nations has drafted a human rights complaint to be submitted to the Canadian Human Rights Commission alleging that the federal government is systematically underfunding child welfare services on-reserve.³⁴⁵

The *Convention on the Rights of the Child* places its primary emphasis on the best interests of the child in determinations of care arrangements, taking into account factors such as culture, health, and safety. The Committee heard that Aboriginal communities traditionally embrace alternative measures that keep children near their families, searching for a foster home first in the immediate family, then the extended family, then within an Aboriginal family, and finally turning to a non-Aboriginal family if none of the community alternatives succeeds.³⁴⁶ Jonathan Thompson of the Assembly of First Nations confirmed that many Aboriginal communities generally do not advocate adoption; rather, they attempt to keep a child in care for as long as possible with family visits in the hope of eventual reunification with the family. He told us that not only is this traditional practice, but keeping children in such forms of customary care is less costly than putting them in foster homes or searching for care outside the community. Dexter Kinequon of the Lac La Ronge Indian Band, Indian Child and Family Services, told us that organizations like his are trying to develop resources within communities so that even if children are not placed in their home community, they can at least be raised within the same band structure and same culture. Cindy Blackstock said that First Nations child and family services agencies have succeeded in ensuring that First Nations children living on-reserve are three to four times more likely to be placed within the community or extended family than children living off-reserve.

Weighing the different factors that go into the best interests of the child is often a complex process; however, our Committee wishes to emphasize that these best interests

³⁴⁵ Assembly of First Nations, *Leadership Action Plan on First Nations Child Welfare*, available at: www.afn.ca/misc/afn-child.pdf

³⁴⁶ Carrie Vandenberghe, Dakota Ojibway Child and Family Services, testimony before the Committee, 19 September 2006.

need to be the primary principle used to determine the placement of an at-risk child. Culture is one element of this evaluation.

Yet despite the push towards alternatives and customary forms of care, Aboriginal children remain greatly overrepresented in the child protection system. The situation is questionable not only for social and cultural reasons, but also on economic grounds. Cindy Blackstock cited the *Wen:de* report in telling our Committee that the needs of Aboriginal children in terms of demand on the child welfare system are twice as high as those of non-Aboriginal children, and yet foster care parents on-reserve receive less per diem than other foster parents. Dexter Kinequon told us that there are next to no resources for family support services to help families regain the capacity to take care of their children. Chief Angus Toulouse of the Assembly of First Nations also told us that although some First Nations communities offer child care services, the Assembly of First Nations estimates that more than 250 First Nations communities do not have regulated child care within the community. Those that do offer child care and early childhood development services are inadequately funded, meaning that there is a lack of services and spaces, particularly for children with special needs. As noted by Cindy Blackstock and Chief Jamie Gallant of the Native Council of Prince Edward Island, the on-reserve protection system's inadequacy is compounded by the fact that many social and other front-line workers working in Aboriginal communities are not Aboriginal themselves, and are not trained to understand Aboriginal languages and cultures. These limitations result in the further marginalization of the children in their care.

Cindy Blackstock and Jonathan Thompson emphasized how Aboriginal children are disadvantaged by their overrepresentation in the child welfare system. The negative effects include lower rates of educational success, higher reliance on income assistance, increased health problems, and increased involvement with the justice system. Each of these consequences has a significant impact on the lives of Aboriginal children as well as society more broadly.

Ensuring the preservation of culture in the child protection context is an issue of great debate among First Nations communities, welfare authorities, and foster families. Some

witnesses placed emphasis on the safety and well-being of the child. The Committee recognizes that **preservation of Aboriginal cultures is of great significance to new generations of Aboriginal children. Preservation of culture is also an important aspect of the *Convention on the Rights of the Child*. Initiatives to preserve cultural values, traditions, and languages are of particular importance when dealing with child protection issues and education.**

Marv Bernstein, Children's Advocate in Saskatchewan, told us that he encourages the authorities "to respect cultural identities and be culturally sensitive but [this] can never compromise the interests, safety and protection of the child. Those are basic entitlements that every child in this province deserves, regardless of culture and race."³⁴⁷ Deb Davies told us that the Saskatchewan Foster Families Association

struggle[s] every day with planning for children when we are told it is in the best interests of the children to return them back to their natural families. As you have said, when there has been breakdown after breakdown, when does that child have the right to say, "I want a permanent, safe plan." We believe children belong with their families and with their communities but only when it is safe for them to be there. Children deserve consistency and safety; safety is first and foremost.³⁴⁸

Other witnesses placed emphasis on the cultural and community upbringing of the child. Marilyn Hedlund of the Government of Saskatchewan told us that:

When we think of the best interests of the child and how we promote their well-being, it is difficult to separate that from the interests of family and culture, although I appreciate that we need to have a clear focus on the safety, well-being and best interests of the child.³⁴⁹

Dexter Kinequon reaffirmed this view:

The Saskatchewan Children's Advocate reported in 2000 that three out of four First Nations children in care are placed in non-First Nations resources. We believe that that is a gross violation of Articles 20 and 30 of the convention. The best interests of the child is the usual reason given to justify the placement of children away from their families and alternate resources. The definition of "the best interests" has been established by

³⁴⁷ Bernstein testimony.

³⁴⁸ Deb Davies, Executive Director, Saskatchewan Foster Families Association, testimony before the Committee, 19 September 2006.

³⁴⁹ Hedlund testimony.

several court cases. Rarely, however, does the continuity of the child's culture influence the placement of the children in care. Safety and the lack of appropriate resources are the most common justifications used to ignore the convention. It is our belief that First Nations have the right to determine the best interests of a First Nations child.³⁵⁰

Ultimately, none of these witnesses would disagree with either the importance of the child's safety or the significance of ensuring his or her upbringing within Aboriginal culture. Our Committee echoes the opinion of witnesses such as Elspeth Ross who told us that **authorities need to seek out and enhance means of providing Aboriginal children in care with a committed, permanent family while ensuring that they do not lose their connection to their culture and community.** This is the foundation of the *Convention on the Rights of the Child*.

One important means of accomplishing this goal was emphasized by Jennifer Lamborn and Cindy Blackstock. **The federal government should increase funding for “least disruptive measures” – programs that provide support to parents in order to create conditions that will allow children to remain in their homes in a safe environment. Rather than providing funding only for removal, federal funding should reflect provincial welfare laws which emphasize that every alternative must be exhausted before a child is removed from his or her home.** Cindy Blackstock pointed out that in order to do this, child welfare authorities need to learn to be flexible with the rules.

For example, you might have a standard under the provincial government that says the child cannot share a room. I do not know about you, but I grew up for 14 years with my sister under the lower bunk, and that is not a safety issue for many children. Why not amend it, if it means that a child gets to stay in their home?³⁵¹

This approach will also mean increased emphasis on prevention and early intervention, another area that is underfunded by the federal government for on-reserve children. Marv Bernstein told our Committee that currently, officials “almost have to wait until there is a

³⁵⁰ Dexter Kinequon, Executive Director, Lac La Ronge Indian Band, Indian Child and Family Services, testimony before the Committee, 19 September 2006.

³⁵¹ Blackstock testimony, 29 May 2006.

crisis situation before they can intervene.”³⁵² Our Committee supports the concept of **funding for least disruptive measures, which, accompanied by an increased emphasis on prevention and early intervention, may be one of the most effective means of guaranteeing that Aboriginal children in need of protection are provided with the most appropriate level of care, as well as ensuring that they do not lose the connection to their culture and community. Attention should be focused on the primacy of children’s rights in this context.**

2. Standard of Living

Poverty and a poor standard of living are also significant related concerns for Aboriginal children across Canada. Campaign 2000’s 2006 Report Card on Child Poverty in Canada notes that some 60% of Aboriginal children under the age of six and 40% of Aboriginal children living off-reserve live in poverty. These numbers double those that apply to non-Aboriginal children. One out of four children in First Nations communities lives in poverty.

Jennifer Lamborn told us that 44% of on-reserve dwellings are considered inadequate, while the 2005 Report Card on Child Poverty in Canada noted that about 25% of Aboriginal children off-reserve live in poor housing conditions, as compared to 13% of all children in Canada. Overcrowding in First Nations communities is double the rate for the rest of Canadians, and mould is present in almost half of First Nations households.³⁵³

Jonathan Thompson told us that “[t]he numbers, as startling and dire as they are, have been there for some time yet the government has not moved. Is it not a sexy enough issue? I do not know what the challenge or the problem is.”³⁵⁴

With respect to standards of living on- and off-reserve, the Committee notes that **poverty is at the heart of most problems affecting Aboriginal children and Aboriginal communities more broadly.** Sandra Ginnish told our Committee that in 2005, the government announced \$295 million in funding (over five years) to provide

³⁵² Bernstein testimony.

³⁵³ Campaign 2000, *2006 Report Card*.

³⁵⁴ Jonathan Thompson testimony.

additional housing, renovations, and additional infrastructure in First Nations communities across Canada. The aim is to build 6,400 units and renovate 1,500 units. Despite this initiative, our Committee must emphasize that poverty is a pressing and all-encompassing issue under the *Convention on the Rights of the Child*. All levels of government need to work with Aboriginal leadership to do still more to improve the standard of living on- and off-reserve. **More funding that targets the provision of housing and housing subsidies should be proffered to ensure the effective long-term protection of Aboriginal children's rights in Canada.**

These bodies should also work together to enhance economic development on-reserve. Chief Angus Toulouse spoke of the need to create employment opportunities on-reserve so that youth have the opportunity and choice to stay on-reserve if they so desire:

[T]he majority of youth always remind me that we need economic development to create employment opportunities so they can stay and take care of their parents, and continue to be who they are. They want to ensure that their children know their culture, language, ceremonies and traditions...

First Nations want to provide an opportunity for their youth to come back after they complete their academic studies and gain experience in their fields to offer their services to the community with much more skill and academic qualifications.

Not all youth want to go to the city. There is a tremendous demand for housing at the community level that is not all seniors or individuals who are not returning. The demand is coming from youth who have settled, are engaged and about to be married, or married, and are not interested in leaving the area. There are more youth on-reserve than off-reserve.³⁵⁵

Jonathan Thompson told us that:

Unfortunately, it often requires a tragedy of some sort to get action... Money is required, but simply throwing money at it does not help. We have to understand why the situation is there and what are the fundamental

³⁵⁵ Chief Angus Toulouse, Ontario Regional Chief, Assembly of First Nations, testimony before the Committee, 19 June 2006.

reasons. Then, address those. Those types of measures, unfortunately, will likely take some time to turn around.³⁵⁶

3. Health

In its Concluding Observations, the UN Committee on the Rights of the Child expressed deep concern about health issues for Aboriginal children. The Committee commented on the lack of universal and accessible health programs in rural and northern communities, as well as for children in Aboriginal communities, and expressed particular concern at the disproportionately high prevalence of sudden infant death syndrome and FASD among Aboriginal children. The Committee was also troubled by the high mortality rate among the Aboriginal population and the high rate of suicide and substance abuse among Aboriginal youth. It commented that the suicide and diabetes rates among Aboriginal youth in Canada are among the highest in the world.

Our Committee heard testimony supporting these concerns. Jonathan Thompson told us that 12% of all First Nations children have disabilities and special needs. This is a significantly higher percentage than for the non-Aboriginal community, and is particularly serious considering that such children need to be sent off-reserve in order to receive adequate care. In a brief submitted to our Committee, Yude Henteleff noted the remarkably high rate of FASD among Aboriginal children and youth – approximately 10 times higher than for non-Aboriginal children. While new research suggests that children affected by FASD can develop at the same level as other children if they get constant mental stimulation and nurturing in the first two years of their life, such treatment is less likely to be a reality for children living on-reserve. Health Canada has also recently launched an Aboriginal Diabetes Initiative. The Métis, Off-reserve Aboriginal and Urban Inuit Prevention and Promotion Program provides time-limited funding for diabetes prevention and health promotion projects and serves Métis, off-reserve Aboriginal and urban Inuit.

Billie Schibler and Cindy Blackstock also told our Committee about the alarming number of child deaths resulting from suicide. Ms. Blackstock told us that youth suicide is not necessarily prevalent in all communities, but it is a critical problem for many. For

³⁵⁶ Jonathan Thompson testimony.

example, she told us that in British Columbia, 90% of suicides took place in 10% of the First Nations communities. Sandra Ginnish and Havelin Anand from the Department of Indian Affairs and Northern Development told us about federal government programs that attempt to resolve these issues. The government has been working with national Aboriginal organizations since 2005 to develop a framework for a National Aboriginal Youth Suicide Prevention Strategy that will involve prevention, early intervention, and crisis response initiatives. The framework was to have been implemented in fall 2006; however, the Committee is unaware of any action taken in this regard. The federal government has also been speaking with Aboriginal organizations about developing a youth engagement strategy to find out what measures youth feel are needed to prevent suicide.

In order to comply with Canada's obligations under the *Convention on the Rights of the Child*, more health services are needed on-reserve, both to ensure that children with special needs do not become children in need of protection and put in care, and to ensure that families do not need to move far from their community to seek the services they need. Dexter Kinequon emphasized **the need for Health Canada to expand the ability of health services to get involved early and work with children in their homes as opposed to removing them when in crisis. In-home supports are also needed to ensure that families and children do not have to move to other centres to receive such services.** He told our Committee of situations in which children and youth are sent to facilities far from home, but within weeks of returning home with no more on-site support, they often quickly lapse back to their pre-treatment condition. "If nothing has been done to make changes in the home, it is difficult to bring about changes for the child."³⁵⁷ **Aboriginal health professionals should be encouraged to become more involved in the provision of services on-reserve** in order to ensure cultural continuity and understanding.³⁵⁸ Marlene Peters of the Long Plain First Nation emphasized that such professionals should receive training in issues of particular concern to First Nations communities, such as FASD. **Our Committee is also eager to know the results of the youth engagement strategy on suicide, as well as the status of the National**

³⁵⁷ Kinequon testimony.

³⁵⁸ The Honourable Carolyn Bennett, Minister of Health, testimony before the Committee, 16 May 2005.

Aboriginal Youth Suicide Prevention Strategy that we were told was to be implemented in fall 2006.

4. Education and Culture

Numerous witnesses appearing before our Committee alluded to the poor quality of education available to Aboriginal children, and the erosion of traditional languages and cultures both on- and off-reserve.

Statistical data indicate an extremely high drop-out rate for Aboriginal students. Chief Angus Toulouse told us that in the 2001 Census, only 31% of First Nations youth aged 15 to 24 had a high school diploma or certificate, compared to 58% of non-Aboriginal youth. Among those aged 20 to 24, 43% of Aboriginal youth did not have a high school certificate, compared to 16% of non-Aboriginal youth.³⁵⁹ Chief Dennis Meeches of the Long Plain First Nation told us that although First Nations may have control of schools, there are serious challenges in terms of funding³⁶⁰ and keeping children in school. First Nations communities are struggling to find new ways of delivering education to deal with this situation.

Marilyn McCormack, Deputy Child and Youth Advocate in Newfoundland, told our Committee that one of the primary problems with respect to education for Aboriginal children is that the education system, even on-reserve, is not sensitive to culture; young people are dropping out of school because the programming is not responsive enough to their lifestyle and culture. Chief Angus Toulouse echoed this view, telling us that Aboriginal youth feel a strong need for cultural programming: “many of our children remind the adults now that you cannot forget about us and you cannot continue to not provide language in our First Nations schools.”³⁶¹ The importance of culture in education for youth was brought home by Possesom Paul, a student who appeared before our Committee in New Brunswick:

³⁵⁹ “Improving Primary and Secondary Education on Reserves in Canada,” Caledon Institute of Social Policy, October 2006.

³⁶⁰ The federal government funds on-reserve schools at the same level as comparable provincial schools.

³⁶¹ Toulouse testimony.

[T]hinking along the lines of bringing back education about people's cultures, elders are the ones in my community who have the fluent language, yet they are at the ages of 50 to 60 and 70. For them to teach the language in regular schools, they need a bachelor's degree or something, but I believe at that age, you should not need something like that to teach a language. A lot of them will not take that course to teach a language, and I think they should be allowed to teach with just a background check or something. If something is not done soon, then people will have a total loss of culture.³⁶²

These thoughts were echoed by Cheryl, an Ojibwa youth born and raised in Toronto:

Aboriginal children and youth need to learn knowledge on their culture and language to survive. If this cycle continues and Aboriginal culture and language does not get put back into these children and youth they may be lost forever and they will not have their own ethnicity.

Aboriginal children and youth today need to learn their true history because it can save their lives and help them to have an identity and to succeed in the real world. Their heritage needs to be brought back to life in order for their next generation to pass on their culture and language.

If Aboriginal children and youth can learn their true history, culture and language they will be balanced, mentally, physically emotionally and spiritually. This will make them whole and they will not turn to alcohol or drugs to hide, but would be going down a new path to improve their culture for all the generations to come.³⁶³

Our Committee has concluded that in order to come into compliance with article 30 of the *Convention on the Rights of the Child*, culture needs to be emphasized in schools in Aboriginal communities. Kristen Sellon of the Charles J. Andrew Youth Treatment Centre in Sheshatshiu, Labrador, emphasized the need for more Aboriginal teachers. Children and youth need to learn their traditional languages, not just at home, but as part of their schooling. **Not only should the Aboriginal community be involved in curriculum development, the number of Aboriginal teachers in classrooms should also be increased as one way of informally responding to the concerns of Aboriginal youth with respect to their loss of culture. Such teachers will be well placed to ensure that culturally sensitive programming is in place. The federal government should work with First Nations leadership and provincial and territorial ministers of education to**

³⁶² Possesom Paul, testimony before the Committee, 14 June 2005.

³⁶³ Cheryl, testimony before the Committee, 29 January 2007.

discuss ways in which Aboriginal people can be encouraged to become teachers and to work on-reserve where they can make a significant impact on Aboriginal children's lives. Teachers of Aboriginal heritage should also be given equal opportunities to find employment in schools off-reserve. Access to education is a key component in changing lives and futures – First Nations leadership and all levels of federal government should use the principles enshrined in the *Convention on the Rights of the Child* to make such change possible.

5. Jurisdictional Conflicts

Clearly, jurisdictional conflicts are a significant obstacle to the protection of Aboriginal children's rights and the management of their care. Brent Parfitt told our Committee that the way that Canada deals with Aboriginal children is

inexcusable... and a lot has to do with our federal system.

We have the federal Indian Act, and then we have provincial legislation that deals with child welfare issues, and the two do not seem to come together very well. Aboriginal children are still falling through the gaps, and there is no reason for that in this day and age.³⁶⁴

The First Nations Child and Family Caring Society's August 2005 report emphasized this concern, noting that jurisdictional disputes significantly erode the well-being of First Nations children in care on-reserve. The *Wen:de* report picked up on this, illustrating the results of a survey which indicated that 12 First Nations child and family services agencies across Canada had experienced 393 jurisdictional disputes over the past year, requiring an average of 54.25 person hours to resolve each incident. Tellingly, the most frequent types of disputes were between federal government departments, at 36%. Twenty-seven per cent of disputes were between provincial government departments, and 14% were between the federal and provincial governments. Melanie Pritchard of the Long Plain First Nation told us that individuals delivering services to children are "head butting all the way."³⁶⁵

³⁶⁴ Parfitt testimony.

³⁶⁵ Melanie Pritchard, Long Plain First Nation, testimony before the Committee, 18 September 2006.

The results of such conflicts can be disastrous. Dexter Kinequon told us that “[d]isputes between governments and departments over jurisdiction, financial responsibility and mandate have resulted in a complicated, fragmented mix of programs and services.”³⁶⁶ Not only do such disputes have an overall negative impact on service provision, but they frequently go against the best interests of Aboriginal children. A number of witnesses told us of situations in which a child’s file was bounced from one agency or department to another while the child waited for care. The Committee finds this situation unacceptable.

Our Committee notes that **one of the first steps towards finding solutions for Aboriginal children is to develop a solid groundwork for cooperation among all levels of government, as well as First Nations leadership with respect to Aboriginal issues.** Chief Dennis Meeches emphasized that governments need to find ways to stop “bouncing jurisdictions back and forth”³⁶⁷ on children’s issues. Cindy Blackstock and Rita Karakas of Save the Children Canada said that the government cannot hide behind jurisdictional dilemmas, but needs to work with First Nations leadership and provincial and territorial governments and encourage them to use the *Convention on the Rights of the Child* in order to find concrete solutions for protecting and implementing Aboriginal children’s rights. In terms of child welfare, Kathy Vandergrift and Cindy Blackstock echoed recommendations made in the *Wen:de* report, stating that **jurisdictions should ensure that a child’s well-being and safety always come first in resolving jurisdictional disputes. They called for a “child first” principle (“Jordan’s Principle”)** whereby the government that first receives a request for payment of services for a First Nations child pays for those services in situations where such services are otherwise available to non-Aboriginal children.

6. Aboriginal Children Off-Reserve

Witnesses told our Committee that the situation of Aboriginal children off-reserve should also be carefully monitored. Campaign 2000’s 2005 Report Card on Child Poverty in Canada noted that 69% of Aboriginal people live off-reserve, with 50% in

³⁶⁶ Kinequon testimony.

³⁶⁷ Chief Dennis Meeches, Long Plain First Nation, testimony before the Committee, 18 September 2006.

urban areas. Chief Dennis Meeches told us that many Aboriginal families and youth migrate to cities because of housing shortages on-reserve, as well as to seek better education and economic opportunities.

Yet Chief Jamie Gallant emphasized that there are fewer resources, programs, and services directed towards the specific needs of Aboriginal children without status or living off-reserve, and the picture for Aboriginal youth and families living off-reserve is not always pleasant. In large urban areas almost half of Aboriginal children live in single-parent families, many in deep and persistent poverty. Witnesses told us that children living off-reserve are not exposed to their history and culture, and that many such children have a hard time adapting to their new environment and frequently get involved in gang violence and drug problems. In order to escape such circumstances, specifically targeted programs are needed off-reserve; but such programs are not always available.

Echoing comments made by Chief Jamie Gallant and Chief Dennis Meeches, the Committee wishes to emphasize the **need to ensure that support services continue for Aboriginal children living off-reserve. Culturally oriented services should be put in place to respond to the specific needs of Aboriginal children and to avoid social breakdown in Aboriginal communities living off-reserve. Chief Meeches stated that such services need to find ways to reach out more effectively to Aboriginal children and to teach them about Aboriginal culture.** Not only are such measures important to the preservation of Aboriginal culture, but they are also particularly significant in the lives of individual Aboriginal children and youth who may be drawn towards gangs and violence in response to feelings of being cut off from their community and culture.

7. Seeking Tailored and Local Solutions

In keeping with article 30 of the *Convention on the Rights of the Child*, Fred Milowsky, the Deputy Child and Youth Officer in British Columbia, emphasized that **the federal government also needs to review the services provided to Aboriginal communities to ensure that the approach and content are effectively tailored to meet the specific needs of Aboriginal children, youth, and families.** As noted by Dexter

Kinequon, First Nations children and families “have a right to have access to a... range and level of services that recognize, protect and accommodate First Nations values and cultures.”³⁶⁸ An example of such tailored services is available in the Manitoba child protection system; Cindy Blackstock told us that:

[They] have an excellent model evolving in Manitoba where there are four authorities that will deliver services in child welfare off-reserve: one that is a non-Aboriginal authority, one that is for southern First Nations, one that is for northern First Nations and one for Metis people. The wonderful thing about it is that if you are a Metis person, you can choose to be serviced by the Metis authority, or you can choose one of the other authorities as well. That goes for every client. It reaffirms the ability of people to be serviced by the organization which best reflects their own culture and the culture of their children.

The second thing it does is exercise a little bit of quality control because you can then make a choice about which authority you have the most confidence in to deal with these difficult issues.³⁶⁹

Ultimately, **the federal government needs to work directly with Aboriginal communities in the development of programs and services designed to meet their needs.** Chief Dennis Meeches emphasized that effective problem-solving will involve taking a holistic approach to Aboriginal communities and children, while Janet Mirwaldt, former Children’s Advocate in Manitoba, told us that **the only way to deal with these issues is to let the communities themselves be part of the solution.** In order to do this, Aboriginal leadership should be closely involved – not only national organizations, but local leadership as well.

Government officials echoed this perspective, telling the Committee that their most successful initiatives have involved this kind of integrated local approach. In the words of Kelly Stone, Director of the Division of Childhood and Adolescence at Health Canada:

Our success stories are such because they have been done in close partnership with the Aboriginal communities in a culturally sensitive manner that takes into consideration the particular traditions of that community, the way in which their elders view their history and traditions, and how they want their children to be taught. It is, in a sense, community ownership of the programs. Bureaucrats are not coming in and imposing

³⁶⁸ Kinequon testimony.

³⁶⁹ Blackstock testimony, 29 May 2006.

things. The community takes it and shapes it in a way that makes sense for them with capacity-building guidance.³⁷⁰

Sandra Ginnish told us that “[i]n terms of consultation, in my opinion, it is fair to say that historically, we have found that unless we design programs and policies in close collaboration with First Nations people, they will not work in the community.”³⁷¹

Aboriginal witnesses encouraged the government to place increased emphasis on such initiatives, pointing out that these “success stories” are not necessarily the norm, and that local involvement is not always taken seriously. Dexter Kinequon told us that:

One matter I think is very important is the lack of vision within the federal government regarding First Nations people... There is a problem within First Nations communities and the federal government simply does not know what to do about it. Policies are put in place to deal with the problem, and every time a policy does not work, it is simply replaced. There is no overall vision of how to resolve the systemic issues...

The federal government needs a different approach, a different philosophy of openness. Currently the guiding principle for everything is money and how to spend the least amount possible to resolve the situation...

As a director of a child welfare agency, I can tell you that I struggle with the inequity that exists for a First Nations organization dealing with the bureaucracy of government. Often there is no reciprocity; it is all one-way. When I am dealing with government I often feel I am being treated like a child...³⁷²

Cindy Blackstock pointed out that it is important to recognize that the solutions to many problems already exist within Aboriginal communities, and that funding and government support are needed for effective implementation:

I would say that my greatest hope and comfort for this generation of First Nations and Aboriginal children in this country is that many communities already have the solutions. It is now a matter of giving them the same level of resources so that they can implement those solutions...

[O]ne of the elders said to me that these NGOs do not realize that we already have the solutions. They do not need to come up with solutions.

³⁷⁰ Kelly Stone, Director, Division of Childhood and Adolescence, Health Canada, testimony before the Committee, 16 May 2005.

³⁷¹ Ginnish testimony.

³⁷² Kinequon testimony.

They need to support us in getting the resources so that we can implement our own best solutions...

As a first step, we need to provide funds to communities to do that sustainable planning and then resource it according to their own priorities.³⁷³

8. Section 67 of the Canadian Human Rights Act

Finally, Chief Angus Toulouse and Cindy Blackstock called for the repeal of section 67 of the *Canadian Human Rights Act*.³⁷⁴ This section has restricted First Nations' access to the *Canadian Human Rights Act*'s redress mechanisms with respect to "any provision of the *Indian Act* or any provision made under or pursuant to that Act." As noted by Cindy Blackstock:

The Human Rights Commission, under article 67, prohibits anything coming forward under the Indian Act. As a result, we have a situation where children and families have no recourse to redress the human rights violations other than the courts. Those children who experience the most grievous human rights violations are denied access to redress systems that would most help them bring their cases forward to the Canadian public to have them redressed.³⁷⁵

Witnesses appearing before the Committee were not alone in their request: both Parliament and the Canadian Human Rights Commission have recently taken action on this issue. In a report released in October 2005, the Canadian Human Rights Commission called upon the federal government to repeal section 67.³⁷⁶ Our Committee was heartened to see that a first step towards such a measure was taken in December 2006, when the government introduced Bill C-44, An Act to Amend the Canadian Human Rights Act,³⁷⁷ finally putting this issue into debatable form.

³⁷³ Blackstock testimony, 29 May 2006.

³⁷⁴ R.S.C. 1985, c. H-6.

³⁷⁵ Blackstock testimony, 29 May 2006.

³⁷⁶ Canadian Human Rights Commission, *A Matter of Rights: A Special Report of the Canadian Human Rights Commission on the Repeal of Section 67 of the Canadian Human Rights Act*, October 2005, available at: www.chrc-ccdp.ca/proactive_initiatives/section_67/toc_tdm-en.asp

³⁷⁷ Available at: www2.parl.gc.ca/content/hoc/Bills/391/Government/C-44/C-44_1/C-44_1.PDF

RECOMMENDATION 18

Pursuant to articles 2 and 30 of the *Convention on the Rights of the Child*, the Committee recommends that:

- Section 67 of the *Canadian Human Rights Act* be repealed;
- The federal government target funding as a priority for “least disruptive measures” with respect to child welfare, accompanied by an increased emphasis on prevention and early intervention;
- The federal government make housing a top priority and develop enhanced initiatives to promote economic development on-reserve;
- The federal government provide more funding to ensure that support services continue for Aboriginal children living off-reserve;
- The federal government review the services that it provides to Aboriginal communities to ensure that the approach and content are effectively tailored to meet the specific needs of Aboriginal children, youth, and families; this includes working directly with Aboriginal communities in the development of programs and services designed to meet their needs;
- The federal government expand the ability of health services to provide in-home supports, and to get involved early and work with children in their homes;
- The Department of Indian Affairs and Northern Development provide our Committee with an update on the results of the youth engagement strategy on suicide, as well as the status of the National Aboriginal Youth Suicide Prevention Strategy – this Strategy should be implemented as swiftly as possible;
- The federal government accelerate work with provincial and territorial ministers of education to discuss ways in which Aboriginal people can be encouraged to become teachers and to work on reserves;
- While recognizing the need for Aboriginal teachers on-reserve, the federal government work with provincial and territorial ministers of education to remove barriers to facilitate the employment of Aboriginal teachers off-reserve if they so desire;
- The federal, provincial, and territorial governments work with Aboriginal leadership to carefully examine policies that have an impact on Aboriginal children’s lives through the framework of the *Convention on the Rights of the Child*; and

- **All federal policies and legislation with respect to Aboriginal children place particular emphasis on the need to take the cultural needs of Aboriginal children into account.**

Chapter 17 - Ensuring Effective Implementation of the Convention on the Rights of the Child in Canada

We must do more to ensure that the goals and principles of the Convention on the Rights of the Child are fully and meaningfully realized for all children in Canada... We need not only dream of a just and humane society – we can build it.³⁷⁸

The Committee's investigations have firmly led us to the conclusion that the *Convention on the Rights of the Child* is not solidly embedded in Canadian law, in policy, or in the national psyche. Canadians are too often unaware of the rights enshrined in the Convention, while governments and courts use it only as a strongly worded guiding principle with which they attempt to ensure that laws conform, rather than treating it as an instrument necessitating concrete enforcement. No body is in charge of ensuring that the Convention is effectively implemented in Canada, and the political will is lacking

In our Committee's discussions with the Committee on the Rights of the Child, members emphasized that implementation is key to making the Convention work, and that for Canada to claim that it fully respects the rights and freedoms of its children, it needs to improve its level of actual compliance. As noted by Peter Leuprecht of the Université du Québec à Montréal, the Convention has both a passive and an active component. In article 2,

[t]he passive obligation to respect requires a state party to refrain from violations of the rights set forth in the convention. The obligation to ensure goes well beyond that; it implies an affirmative obligation on the

³⁷⁸ The Honourable Irwin Cotler, International Bureau for Children's Rights Conference, *Making Children's Rights Work: National and International Perspectives*, Montréal, 18 November 2004.

part of the state to take whatever measures are necessary to enable children to enjoy and exercise their rights.³⁷⁹

The federal government needs to take the lead with respect to implementation of the Convention.

Using the Committee's findings from the Interim Report as a building block, our Committee has concluded that the federal government does not have effective mechanisms in place to ensure compliance with its international human rights treaty obligations – additional mechanisms need to be put in place to ensure effective protection of children's rights in Canada. As noted by Lisa Wolff of UNICEF Canada:

[U]nless Canada takes specific steps to build more effective legal and administrative measures and mechanisms for implementation of children's rights, they will languish in piecemeal legislative change dependent on the unpredictable goodwill of parliamentarians, in jurisdictional fractures, and in uncertain accountability...

Ratification was only the first step in the process of compliance and needs to be reinforced by a range of measures that will remedy any perceived consequences of hasty ratification and address evolving issues.³⁸⁰

In response to concerns expressed by witnesses across Canada and abroad, the Committee will propose measures to guarantee systematic monitoring of the Convention's implementation in order to ensure effective compliance. These include proposals for the establishment of a federal interdepartmental implementation working group to coordinate and monitor federal legislation and policy affecting children's rights, and an independent children's commissioner to monitor government implementation of children's rights at the federal level and liaise with provincial child advocates. The Committee also highlights witnesses' emphasis on the need for awareness-raising with respect to both the Convention and the rights-based approach embedded within it. Most importantly, through its recommendations the Committee seeks to strengthen the active involvement of children in all institutions and processes affecting their rights.

³⁷⁹ Leuprecht testimony.

³⁸⁰ Wolff testimony.

RECOMMENDATION 19

As the federal government has signed and ratified the *Convention on the Rights of the Child*, the Committee recommends that the federal government immediately implement and comply with its obligations under that Convention.

A. EDUCATION AND AWARENESS-RAISING

1. Awareness of the Convention in Canada

Our Committee has heard numerous witnesses express concern about the lack of awareness, both in government, in Parliament, and among the public, of the *Convention on the Rights of the Child* and the rights enshrined in it. Throughout our hearings, we became aware that there is very little knowledge of the Convention outside academic and advocacy circles. Even the reporting process to the UN Committee on the Rights of the Child has been unable to change this. Lisa Wolff noted that in practice these reports make Canada accountable to the international community rather than to Canadians themselves. She said that “UNICEF will know more about what Canada has said about Canada’s children’s right[s] than our own populous will.”³⁸¹

In government, even among those dedicated to protecting children’s rights, knowledge of the nearly 20-year-old Convention is spotty at best. The Committee has discovered that some government officials working towards the protection of children’s rights seem to operate in ignorance of the international tool at their disposal. In many respects, the Convention is simply not used as a means or a framework to protect children’s rights. Christine Brennan of the Office of the Ombudsman of Nova Scotia told the Committee that:

[I]n our educational campaign to provide education rights to government, youth and other youth-serving entities within the province, we discovered that 90 per cent do not even know that this Convention exists. These people direct the youth-serving systems of our province.

Nova Scotia has an advanced system compared to the rest of the country, but we are embarrassed to say that the provincial government departments, excluding the Department of Community Services and the Department of Justice where we are very proactive, do not know about the goals of the

³⁸¹ *Ibid.*

Convention on the Rights of the Child. As always, youth issues and rights are at the bottom of the serious issues in the country.³⁸²

Bernard Richard, Ombudsman for New Brunswick, who is also responsible for dealing with children's rights issues, responded to a question concerning how often the New Brunswick public service and legislature use the Convention:

I would say rarely, if ever, and I was a member of the legislature for about 13 years. I do not know that I ever heard it mentioned in those years. Certainly we do not use it at our office. We do not refer to the Convention. We refer to our statutes and laws and rights, our Charter of Rights and the legislation here in New Brunswick. In my view, it is not used at all and not considered specifically...

Your invitation to me to come here has certainly helped me become more aware of the Convention, and it may be that our practice will change over the coming months and we will refer to the Convention in dealing with some of these cases, because I think it is an important tool that we have not been using in New Brunswick.³⁸³

Perhaps less surprisingly, children themselves were unaware of the existence of the Convention and the rights enshrined within it. Across Canada, the Committee met with self-aware youth from a variety of backgrounds, most of whom had never heard of the *Convention on the Rights of the Child* before preparing for their meeting with us. Their comments emphasized the importance of awareness-raising, and the significance of knowing one's rights as a first step towards empowerment. As stated by Megan Fitzgerald, a student in St. John's:

[A]bout a week ago [I was asked] to come here [and told] I would have to read the Convention on the Rights of the Child. I was, like, well, what is that, because I had never heard of it before. I felt badly admitting that – because I am an elitist in my school. I am very involved in the school, I maintain high marks, and I try to be involved in the community. Yet, someone like me who knows so much about what is going on, at least in my community, knew nothing about my rights, as set out in the Convention on the Rights of the Child.

That is a big part of education and empowering youth. How can we feel motivated and empowered to implement our rights into our own lives if we do not even know them? That is something that we have to work on

³⁸² Christine Brennan, Supervisor of Youth and Senior Services, Office of the Ombudsman of Nova Scotia, testimony before the Committee, 16 June 2005.

³⁸³ Bernard Richard, Ombudsman for New Brunswick, testimony before the Committee, 14 June 2005.

together – us as youth and you guys as the big shots. We have to work on that, so that we can be empowered to put them into place in our own lives.³⁸⁴

Recognized and understood by so few, awareness of the Convention only occasionally filters down to those it is meant to protect. Although many children clearly understand that they do have rights in a general sense (as emphasized by Katie Cook in Fredericton, “As far as knowing about the Convention, I do not necessarily know that I have heard of that exact document, but we know we have those rights, especially as children. At least I do”³⁸⁵), witnesses from across Canada have told the Committee that this is not enough. They have indicated that **for the Convention to ever be fully and effectively implemented in Canada, the public and the Convention’s primary stakeholders need to know how particular rights affect their lives and how the non-observance of those rights may significantly alter their lives.** Witnesses emphasized that for children, learning about their rights is often a transformative experience. As stated by the Committee on the Rights of the Child, when we as individuals are unaware of our rights, we cannot work to ensure that they are respected:

If the adults around children, their parents and other family members, teachers and carers do not understand the implications of the Convention, and above all its confirmation of the equal status of children as subjects of rights, it is most unlikely that the rights set out in the Convention will be realized for many children.³⁸⁶

This is particularly the case when official institutions charged with protecting children’s rights are not aware of the full array of rights and tools at their disposal. Hawa Mire of GoGirls in Vancouver made the case, particularly poignantly, for more effective implementation of the Convention and heightened awareness among children and those protecting children’s rights:

The adoption of the convention and its very existence seems to me, a bunch of words written on a piece of paper, a lot of them have not been implemented in my life, and I have not seen any evidence of those rights actually affecting me. It is like knowing those rights are there, but also understanding that the system is not necessarily set up to protect me using

³⁸⁴ Megan Fitzgerald, testimony before the Committee, 13 June 2005.

³⁸⁵ Cook testimony. Al Aynsley-Green, Children’s Commissioner for England, made similar comments, stating that children tend to know that they have rights, if not their Convention rights *per se*.

³⁸⁶ Committee on the Rights of the Child, *General Comment No. 5*, para. 66.

those rights most of the time. It is also interesting when you consider the idea that those people that have those rights have no idea that they even exist.

Let me tell you a little bit about my own life experiences. Racism is a huge part of my life and a part of everything I have achieved or been denied. My skin colour is something I can never escape from, something I never want to escape from, and it is something that promotes others to place barriers in front of me. I am really lucky that I am stubborn and I am determined to break down as many of those barriers as possible. When I tell you that the rights listed on the convention are nothing more than papers to me, I am not just saying that. I feel that my life experience embodies that statement.³⁸⁷

2. The Need for Education

On the basis of this testimony, our Committee has concluded that the low level of public awareness of the *Convention on the Rights of the Child* in Canada is an issue that needs to be rectified before we can safely point to effective implementation of the Convention at home. As pointed out by Kathy Vandergrift, article 42 of the Convention calls for States Parties to “undertake to make the principles and provisions of the Convention widely known, by appropriate and active means, to adults and children alike.” This obligation has not been effectively carried out in Canada.

Echoing the testimony of Suzanne Williams of the International Institute for Child Rights and Development, our Committee notes that **a well-resourced and comprehensive communication strategy is needed to disseminate information about children’s rights to decision-makers, professionals, front-line workers, and the public at large, including children.** Fred Milowsky emphasized that:

The shared understanding of rights and the use of the convention as a proactive planning tool by the provincial government is not likely to happen without increased public awareness of children’s rights and the convention. Awareness that rights exist is necessary to their realization.³⁸⁸

Yet even beyond the dissemination of information about the Convention, our Committee wishes to highlight **the need to teach Canadians about the rights-based approach and about why children and the protection of children’s rights are so**

³⁸⁷ Mire testimony.

³⁸⁸ Milowsky testimony.

important. Marilou Filiatreault of the Conseil Jeunesse de Montréal provided us with a vivid example of how children's issues are so often pushed aside:

I attended a meeting this morning, in fact, in one area of Montreal to meet with the elected officials and to tell them that youth issues are important and must not be forgotten in their work. And they said to me: "Marilou, we have streets to repair and infrastructure to fix." To use a young person's expression, I told them that youth issues are not "in" these days...

But there is a lot of work to do to get that message across to adults. It is not just older people who are victims of ageism; young people are victims as well. I am an employment councillor, and employers often say: "Oh, but this person is young." We need to eliminate that barrier.

So a lot needs to be done to create awareness among politicians and in the public about the place of young people in society and the need to provide them with real services.³⁸⁹

There are a variety of ways for such public awareness to take effect. For children, **specific programming can be added to school curricula.** The Committee heard some fascinating examples of how the *Convention on the Rights of the Child* is being used effectively in England to teach children about their rights.³⁹⁰ While some individual jurisdictions or teachers may have implemented similar programs on an informal level in Canada, very few such initiatives exist on an organized scale. Youth appearing before our Committee also emphasized that they do not know about the resources, services and complaints mechanisms available for youth. Joelle LaFargue, one of the young people who testified before the Committee in New Brunswick, stated that:

When I have trouble, and I feel that a right is being infringed, I usually go to either a teacher or the guidance counsellor. I was going to mention the Human Rights Commission, but I do not ever remember knowing how to get hold of them, other than maybe looking them up in the phone book.

Maybe that should be a more presentable thing that if you have trouble and someone is infringing upon your rights, there should be more

³⁸⁹ Marilou Filiatreault, President, Conseil jeunesse de Montréal, testimony before the Committee, 6 November 2006.

³⁹⁰ Anne Hughes, Head Teacher, Knights Enham Junior School, testimony before the Committee, 11 October 2006; Ian Massey, Hampshire Intercultural Education Inspector, testimony before the Committee, 11 October 2006.

information available that you can use this association... there is no information around school or around where I could have easy access to it.

That should be an important thing.³⁹¹

To resolve this issue, **school counsellors could be specifically provided with information about the provincial advocates and other resources in order to make such information more readily available to children and youth seeking help in their schools. Hawa Mire also suggested that information about these services be made available in community centres for those more marginalized individuals who may not seek the advice of school counsellors:**

Obviously, the easiest solution to getting young women to understand these rights and know of their rights is school-based education. However, the problem that lies behind such an easy solution is that the youth getting the information in the schools are not necessarily the youth that need that information. I think the solution lies in creating educational programs and services geared specifically for disadvantaged young women in neutral community areas. These are the children that need to understand the rights they possess because these are the children that our system tends to ignore and pass aside.³⁹²

Facilitating access to information about children's rights can be a powerful instrument in transforming their lives. Beverley Smith of the Care of the Child Coalition told us that she loves "the power kids have when they believe they have a right."³⁹³

However, our Committee notes that parents, too, need to be provided with information about children's rights as well as supports to ensure that they have the means to protect them. Jane Ursel of RESOLVE Manitoba told our Committee that the whole philosophy around parenting education needs to fundamentally shift, and that **information about children's rights should not be provided in an adversarial environment or in a punitive manner, targeting parents of children at risk.** Joan Durrant of the University of Manitoba told us that all parents need this kind of help: "I think that we make a very big mistake by making the assumption that every parent can do

³⁹¹ LaFargue testimony.

³⁹² Mire testimony.

³⁹³ Beverley Smith, Spokesperson for the Unpaid Caregivers Coalition, Care of the Child Coalition, testimony before the Committee, 20 September 2006.

it, that it is natural and you just know what to do.”³⁹⁴ To illustrate this point, Jane Ursel noted that pre-natal classes have universal appeal for young mothers because they are free, non-judgmental, and practical, whereas parenting classes tend to be delivered free only to individual parents judged to be at risk. Our Committee emphasizes that **parents need to be informed about the services that are available to them where they will not be labelled as inadequate. Such services need to emphasize parenting skills, the avoidance of corporal punishment, and how to help children cope with the problems in their lives.**³⁹⁵ Billie Schibler, Manitoba’s Child Advocate, reinforced the view that such services need to highlight the importance of nurturing, not just making sure that “babies are fed on time.”³⁹⁶ Joan Durrant emphasized that:

One of the important components of parent support is recognizing that we need to decrease social isolation among parents, especially new parents, and normalize the challenges of child rearing. Hearing that all babies cry and all babies need to be fed every three hours would do tremendous things to reduce the incidents of shaking of babies. Just hearing that from other parents can be very powerful.³⁹⁷

She also pointed out **the benefit of labour policies that allow parents to take time off work for such necessary parenting programs.**

Finally, numerous witnesses emphasized **the need to provide better training for all professionals dealing with children and children’s issues** – judges; lawyers; teachers; front-line decision-makers such as refugee board members, customs officials, guards; family law mediators; police; social workers. **Professionals such as these should be provided with a solid background with respect to the *Convention on the Rights of the Child*, its application through Canadian law, how most effectively to apply the principle of the best interests of the child, and how to deal specifically with children. Both policy-makers and the drafters of legislation should be trained with respect to the principles and terminology contained in the Convention.**³⁹⁸

³⁹⁴ Durrant testimony.

³⁹⁵ *Ibid.*

³⁹⁶ Schibler testimony.

³⁹⁷ Durrant testimony.

³⁹⁸ See in particular the testimony of Rita Karakas, Katherine Covell, Claire Crooks, and Jahanshah Assadi.

B. A CANADIAN CHILDREN'S COMMISSIONER

1. The Organization

Over two years of hearings, witnesses appearing before the Committee consistently criticized the fact that Canada is one of the few countries in the developed world that does not have a permanently funded mechanism designed to monitor the protection of children's rights. During its study, the Committee itself met with the Children's Ombudsmen in Norway and Sweden, and the Children's Commissioners in New Zealand, Scotland, and England.

The Committee quickly realized that **one of its primary proposals should be the establishment of a Children's Commissioner at the federal level in Canada** to "promote responsible and good governance, and provide a seamless service delivery to children."³⁹⁹ Almost every witness who appeared before the Committee, whether independent experts, advocates for children's rights, or those linked to the UN, supported the establishment of such a monitoring and facilitating body. In particular, the Committee on the Rights of the Child criticized Canada's lack of a federal monitoring body in its latest Concluding Observations:

The Committee notes that eight Canadian provinces have an Ombudsman for Children... the Committee regrets that such an institution at the federal level has not been established.

The Committee recommends that the State party establish at the federal level an ombudsman's office responsible for children's rights and ensure appropriate funding for its effective functioning.⁴⁰⁰

In its General Comment on the implementation of monitoring bodies, the UN Committee emphasized that the establishment of such a body is part of a State Party's obligations under article 4 of the Convention, stating that:

[T]he Committee on the Rights of the Child considers the establishment of such bodies to fall within the commitment made by States parties upon

³⁹⁹ Bernstein testimony.

⁴⁰⁰ Committee on the Rights of the Child, *Concluding Observations*, para. 14-15.

ratification to ensure the implementation of the Convention and advance the universal realization of children's rights.⁴⁰¹

The Paris Principles Relating to the Status of National Human Rights Institutions,⁴⁰² adopted by the UN General Assembly in 1993, list the essential elements of such a national human rights institution: a broad mandate established through legislation; pluralistic representation of society among the appointed members; the power to promote and protect human rights; adequate funding to provide independence from government; and responsibilities, such as submitting reports on human rights matters, promoting harmonization of national legislation with international obligations, encouraging domestic implementation, contributing to country reports to UN treaty bodies, public information and awareness-raising, and research.

a) The Name

The Committee suggests that the new body be named “Children’s Commissioner” in order to highlight the importance of the rights-based approach enshrined in the Convention. Testimony from New Zealand, where the legislation was changed in 2003 to highlight this distinction, emphasized the importance of such an approach. Cindy Kiro explained the implications of this shift:

The change of name is quite significant. Under the initial legislation, the name was the Commissioner for Children; it is now children’s, with an apostrophe – Children’s Commissioner. The change is intended to denote the ownership of the role by children. The change in name also signals an important shift in focus. The original intention of the role was very much around child welfare, in particular, around the functioning of our statutory child welfare agency... the focus is now more clearly on children’s rights. Thus, a shift from a welfare focus and, in particular, I would suggest, a reactive individual case-based focus to one that is rights based, which is more proactive and systemic and looks at how to intervene to stop things from happening.⁴⁰³

⁴⁰¹ Committee on the Rights of the Child, *General Comment No. 2: The Role of Independent National Human Rights Institutions in the Promotion and Protection of the Rights of the Child*, CRC/GC/2002/2, 15 November, 2002, para. 1.

⁴⁰² UN Doc. A/RES/48/134 (1993).

⁴⁰³ Kiro testimony.

b) Independence

Witnesses from across Canada and abroad outlined how such an office could be structured. They emphasized that **Canada’s Children’s Commissioner should be an Officer of Parliament** – appointed by Parliament and accountable to it and, through Parliament, to children and all citizens. **The body should be an arm’s-length, independent institution, endowed with real legal powers** in order for it to effectively monitor implementation and protection of children’s rights.⁴⁰⁴ As noted by the

Committee on the Rights of the Child, “[t]he mandate and powers of national institutions may be meaningless, or the exercise of their powers limited, if the national institution does not have the means to operate effectively to discharge its powers.”⁴⁰⁵

The situation of Norway’s Ombudsman for Children, Reidar Hjermann, highlighted the importance of this issue. Although nominally independent, his office is in fact under the administrative control of the Ministry for Children and Family Affairs – the very body it is charged with monitoring. In the past, this control has constrained the Ombudsman’s power: he has been notified by the Ministry that issues such as government provision of baby bonuses to parents who keep their children out of preschool are of a political nature, and thus not appropriate for comment or criticism from the monitoring body.⁴⁰⁶

Ultimately, the Children’s Commissioner needs to be more than “just an empty office.”⁴⁰⁷ Nicholas Bala of Queen’s University and Jeffery Wilson highlighted the absolute need for a strong monitoring body with tangible powers:

Mr. Wilson: ... The child advocate would have to have some power. They must be able to take action. It would be a big issue if they could not take any action.

⁴⁰⁴ For a more detailed analysis of the essential powers and resources needed by an effective Commissioner’s Office, see Per Miljeteig, *Children’s Ombudsman*, Vol. 1, Save the Children Norway, April 2005, pp. 5-7.

⁴⁰⁵ Committee on the Rights of the Child, *General Comment No. 2*, para. 11.

⁴⁰⁶ Reidar Hjermann, Norwegian Ombudsman for Children, testimony before the Committee, 14 October 2005.

⁴⁰⁷ Tisdall testimony.

Mr. Bala: I completely agree with that. You would not want someone who is merely a public relations figure for the federal government to be the official children's advocate. You would want someone with investigative powers to make recommendations or to directly provide remedies for children. The person should also have legal powers, a clear budget and autonomy.

Your question is a profound one. Does having an ethics commissioner mean that politicians can say we do not have to worry about ethics, because we have an ethics commissioner? Having an ethics commissioner, and similar officers, have highlighted the importance of the matter and given it some teeth.

There is a legitimate tension between the government and those offices.

As long as they have the visibility, independence and powers, they improve the situation for the different kinds of issues with which they deal. The Auditor General is another good example.⁴⁰⁸

The Committee believes that **one of the primary purposes of the Children's Commissioner should be to take responsibility for the *Convention on the Rights of the Child* and ensure that the government remains accountable to children and all citizens.** Our Committee emphasizes that this body cannot merely serve as a reason for parliamentarians and government to back away from their responsibilities in terms of children's rights. This point was echoed by the Canadian Council of Provincial Child and Youth Advocates:

A Children's Commissioner would provide a means of accountability and ensure that the government's commitment to the [Convention] is being carried out in real measures. It would also serve as a method to evaluate the effectiveness of existing and proposed policies and legislation.⁴⁰⁹

The Children's Commissioner should be more than just another bureaucratic officer. The Commissioner would be someone who could cut through the red tape and respond effectively to protect the best interests of the child.

⁴⁰⁸ Wilson testimony; Professor Nicholas Bala, Faculty of Law, Queen's University, testimony before the Committee, 13 December 2004.

⁴⁰⁹ Judy Finlay, Deborah Parker-Loewen, and Janet Mirwaldt, Canadian Council of Provincial Child and Youth Advocates, brief submitted to the Committee, 21 February 2005.

c) The Need for Legislation

Witnesses also emphasized the necessity of **clearly worded legislation setting out the specifics of the powers and duties of the new office**, as is the case with similar bodies, such as the Commissioner of Official Languages or the Privacy Commissioner. Rita Karakas of Save the Children Canada stated that:

As with the Commissioner of Official Languages, there must be legislation which then enables enactment so the Commissioner has some capacity, just as the Auditor General has some capacity. There has to be the ability to act, to intervene.⁴¹⁰

However, beyond setting out the generic responsibilities of this monitoring body, **the Commissioner should have a statutory responsibility to have regard to the *Convention on the Rights of the Child***. As one example, Sweden enacted the first legislation to explicitly link the Ombudsman's mandate to domestic implementation of the Convention in 1993.⁴¹¹ In addition to referring to the Convention, the New Zealand legislation also includes the international instrument as an appendix, thus emphasizing its centrality to the Commissioner's role.

Recognizing the importance of children's voices in this process, Canada's new law should include a statutory responsibility for the Office of the Children's Commissioner to hear from and involve children in its operations.

2. The Role of the Children's Commissioner

a) Monitoring Role

One of the roles of the Children's Commissioner should be to monitor the federal government's implementation of the Convention across Canada. Our Committee recognizes that it is the government's responsibility to implement the Convention, but that alternate mechanisms are needed to ensure the effectiveness of that implementation.

⁴¹⁰ Rita Karakas, Executive Director, Save the Children Canada, testimony before the Committee, 7 February 2005.

⁴¹¹ Linda C. Reif, "The Ombudsman, Good Governance and the International Human Rights System," in *International Studies in Human Rights*, Vol. 79 (Leiden: Brill Academic Publishers, 2004), p. 318.

All witnesses in support of such a body emphasized that **the Children’s Commissioner should conduct ongoing examinations of federal legislation, services, and funding for programs affecting children and their rights**, making “recommendations, assessments and criticisms”⁴¹² of government action or inaction in order to facilitate change. Kathleen Marshall, the Scottish Commissioner for Children and Young People, emphasized that the Commissioner needs to work to hold the government to its promises, highlighting ways in which Canadian law, policy, and practice fail to respect the rights outlined in the Convention.⁴¹³

The Committee suggests that the Children’s Commissioner also be mandated to assist the federal government with preparation of Canada’s periodic reports to the Committee on the Rights of the Child, in partial response to the numerous criticisms heard with respect to this reporting process. Such assistance could include providing advice or recommendations, and could go so far as to involve the preparation of a parallel report by the Commissioner for submission to both the government and the Committee on the Rights of the Child.

Finally, within the purview of this monitoring role, **the Commissioner should be mandated to report annually to Parliament with an assessment of the federal government’s implementation of the Convention**. The report would essentially be a statement as to the status of children’s rights in Canada for a particular year.

What parents or any citizen or any politician wants to know is: How are our kids doing? We want to know in terms of their health, their education, and in terms of all the other aspects of their lives: How are they doing?

⁴¹² Inter-Parliamentary Union, *Child Protection: A Handbook for Parliamentarians*, No. 17 (Geneva: Inter-Parliamentary Union and UNICEF, 2004), p. 37.

⁴¹³ Kathleen Marshall, the Scottish Commissioner for Children and Young People appointed in April 2004, took a practical approach to her new position by focusing on interviews and focus groups with children to identify the key issues of importance to children’s rights in Scotland, as well as ensuring that the *Convention on the Rights of the Child* is reflected in Scottish law, policy, and practice. By contrast, Al Aynsley-Green, who became England’s first Children’s Commissioner in July 2005, approached his mandate by identifying eight areas of policy concern in England: children and society (including commercialization and the media), bullying, asylum and immigration, youth justice, children with disabilities, minority children, vulnerable children, and health. It is interesting to note that England’s Commissioner has no specific function to review the adequacy of law or policy, whereas reviewing all laws, policy, and practices that affect children and young people is a statutory function of the Scottish Commissioner. See Aynsley-Green and Marshall testimony, and Alex Callaghan, National Children’s Bureau, “Children’s Commissioners in the United Kingdom,” Highlight No. 217, May 2005.

How are they doing compared to last year, compared to five years ago or compared to 20 years ago? How are they doing compared to kids in other countries? We also want to know how they are doing according to the standards we have in our heads. As Canadians, we have certain understandings and expectations of what it is to be Canadian. How are we doing relative to those understandings?⁴¹⁴

As stated by the Committee on the Rights of the Child, tabling an annual report would “provide parliamentarians with an opportunity to discuss the work of the [Commissioner] in respect of children’s rights and the State’s compliance with the Convention.”⁴¹⁵ It would also sensitize government and the public as to the rights enshrined in the Convention. The UNICEF Innocenti Research Centre highlights the fact that annual reports “create visibility for children’s real lives and they further increase understanding and hopefully initiate debate on the breaches of their rights.”⁴¹⁶

b) Investigative Powers

Witnesses were adamant that **the Children’s Commissioner also be endowed with significant independent investigative powers – not just into the government’s implementation of the Convention, but also into more systemic issues and broad policies concerning children’s rights in Canada.** Through these means, the Commissioner would be able to stimulate public debate on various issues and make effective recommendations for change.

Like Joanna Harrington of the University of Alberta, the Committee suggests that **the role of Canada’s Commissioner should ultimately be to act as a general spokesperson for children and to conduct systemic investigations** – similar to the role of the Children’s Ombudsmen in Sweden, Scotland, and England, who do not have a mandate to intervene in specific individual cases. The Committee believes that the Commissioner could work to ensure that mechanisms are in place to deal with specific complaints with respect to children’s rights; specific issues would thus be referred to the provincial child advocates and ombudsmen, while immigration and Aboriginal issues

⁴¹⁴ Dryden testimony.

⁴¹⁵ Committee on the Rights of the Child, *General Comment No. 2*, para. 18.

⁴¹⁶ UNICEF Innocenti Research Centre, *Summary Report*, p. 11.

would be referred to the appropriate federal court or tribunal. As stated by Save the Children Norway in its *Children's Ombudsman* report:

Whether able to handle individual complaints or not, it is important that the ombudsman keeps a constant eye on forces in society that serve as violations or obstacles to the rights of children, and bring this knowledge to the attention of the responsible parts of government as well as to the public. Individual complaints could be used to form the basis for more... general initiatives to amend legislation or to remove other factors that result in violations of children's rights.⁴¹⁷

c) Awareness-Raising

Based on discussions with national children's ombudsmen in other countries, our Committee has concluded that the Children's Commissioner should be entrusted with an awareness-raising role to more fully respond to Canada's obligations under article 42 of the Convention. Reflecting suggestions made in section A of this chapter, **the Commissioner should be empowered to conduct public education campaigns concerning the Convention and its rights, as well as with respect to specific issues pertaining to children.** For example, in New Zealand, the Office of the Children's Commissioner runs intensive workshops about on child advocacy across the country and publishes a quarterly newsletter about children's issues.

As an important part of this role, the Children's Commissioner should work to make his or her Office visible and accessible to children, parents, and those providing services to them across Canada. By advertising its presence and responsibilities, the Office of the Commissioner would enhance its own accessibility, which is a crucial part of ensuring effective protection of children's rights. This point was emphasized by all Commissioners who testified before the Committee. They, and other witnesses, highlighted the fact that where individuals and children are unaware of the resources available to them, resources become underutilized and monitoring and rights protection are less certain.

⁴¹⁷ Miljeteig, *Children's Ombudsman*, p. 8.

The same point was noted in the *Innocenti Digest* with regard to monitoring bodies under the Convention:

Rights have little relevance if nobody knows about them or understands them. Human rights institutions for children play a crucial role in informing children, governments, and the public about children's rights, how those rights can be enforced, and why those rights are important. A measure of their success is the extent to which the institutions themselves are visible and accessible to children.⁴¹⁸

d) Aboriginal Affairs

Based on its discussions with witnesses about the particular vulnerabilities of Aboriginal children and their clear marginalization in Canadian society, **the Committee strongly believes that the Office of the Children's Commissioner should have a high-level officer dedicated to investigating and monitoring protection of Aboriginal children's rights.** First Nations children cannot turn to the pre-existing provincial advocates because of jurisdictional barriers. As stated by Cindy Blackstock of the First Nations Child and Family Caring Society of Canada, "there needs to be someone at a federal level to look at the violations of Aboriginal children's rights across different disciplines so that we know what they are."⁴¹⁹

This officer should hold an influential position within the Office of the Children's Commissioner to ensure that this dedicated role is not lost among the myriad of other issues and investigations undertaken by the Commissioner. Perhaps a Deputy Commissioner could be assigned this role.

New Zealand's Children's Commissioner provides a significant example of how Aboriginal children's issues can be prioritized within the Office of the Children's Commissioner. Not only is the current commissioner "a Maori woman... who brings that sensibility to bear for the well-being of all children in New Zealand,"⁴²⁰ but the Office of

⁴¹⁸ UNICEF Innocenti Research Centre, *Innocenti Digest*, No. 8, p. 1.

⁴¹⁹ Blackstock testimony, 7 February 2005.

⁴²⁰ *Ibid.*

the Commissioner also ensures that particular significance is placed on the protection of Aboriginal children's rights in the country. Cindy Kiro commented that:

What happens to Maori children is a priority of my office, and it is a priority for two reasons. One is that the same kind of negative statistics and negative experiences that you have just described for Aboriginal or indigenous communities within Canada is very much a feature of what happens to Maori children here in New Zealand...

The second reason... is that there are very particular rights and obligations that both the state and society as a whole have in respect of those peoples and communities. To be frank, there is nowhere else in the world where these peoples exist.⁴²¹

e) Liaison Role

Provincial advocates emphasized that **the Children's Commissioner should act as a liaison with the Canadian Council of Provincial Child and Youth Advocates** to further facilitate the protection of children's rights and effective monitoring across Canada. Marv Bernstein, Children's Advocate in Saskatchewan, told our Committee that because of the federal system

...[m]y colleagues who are children's advocates in other provincial jurisdictions and I often feel as though we are trying to fill in the gap through our Canadian Council of Provincial Child and Youth Advocates trying to touch upon federal jurisdiction where there are impacts upon the rights of children. Under federal legislation we can certainly advance interests within our home provinces but there is a clear gap at the federal level. We would like to work in a collaborative fashion with a Canadian children's commissioner...

There often is a lot of activity; however, what sometimes seems to be missing is coordination, the articulation of a vision, having a sense of direction, integration of services and a sense of a collaborative partnership.⁴²²

Fred Milowsky, Deputy Child and Youth Officer in British Columbia, also noted that "the lack of a federal counterpart creates a hole that needs filling."⁴²³

⁴²¹ Kiro testimony.

⁴²² Bernstein testimony.

⁴²³ Milowsky testimony.

The Children's Commissioner could help to fill these gaps and facilitate dialogue between the provinces, creating a more effective protection network.⁴²⁴ Through these means, provincial children's advocates working with different legislation and different mandates will be better able to share information and statistics that may facilitate dialogue and investigations into particular and more systemic issues concerning the protection of children's rights. As suggested by Marv Bernstein, the Children's Commissioner could also push for the establishment of independent children's advocates in all provinces. The federal and provincial advocates could potentially work together to establish best practices and facilitate the creation of national uniform standards, using the federal Commissioner as a coordinating framework. Pointing out how these bodies could use jurisdictional frictions to facilitate dialogue and beneficial change, Judy Finlay, Ontario's Child Advocate, stated that:

[A federal] Commissioner can be helpful to try to articulate the questions and to mediate some solutions. I do not think the passionate questions and the friction are bad. We need to have the dialogue in our country, and we need to have children as part of the dialogue. If we were to include young people and children in the conversation, we would quickly determine what is meaningful, because the young people would help us to do that...

Even though we have different mandates and somewhat different authorities, we find that the issues are the same for children's advocates across the country. As a council, we would welcome and work closely with a Commissioner. Almost all provinces now have a provincially appointed advocate. The liaison between the provinces, through the Advocates, to the Commissioner would be one possible remedy to some of the disagreements or frictions between the provinces and the federal authority.⁴²⁵

The Children's Commissioner should also encourage collaboration and consultation between various levels of government and with non-governmental organizations and other service providers who are currently working in a somewhat disjointed fashion to protect children across the country. The NGO Group for the Convention on the Rights of the Child expressed frustration with the fact that NGOs working on children's rights in Canada are not consolidated, thus impeding the

⁴²⁴ Julien testimony.

⁴²⁵ Finlay testimony, 21 February 2005.

systematic monitoring of children's rights.⁴²⁶ Dr. Julien noted that "[t]here are many community groups, but often, these groups do not talk to each other. That is quite a widespread phenomenon."⁴²⁷ Organizations and individuals working on children's issues often wonder "who to talk to."⁴²⁸ The Children's Commissioner could play a significant role in helping to bring such NGOs together.

f) Involvement of Children

The Committee also strongly suggests that the Children's Commissioner have a statutory obligation to listen to and involve children. According to article 12 of the Convention, children have a right to express their views and have those views taken seriously in all matters affecting them. The Commissioner should be mandated to fulfil this obligation as defender of children's rights at the federal level. As stated by the Committee on the Rights of the Child, the Children's Commissioner should "have direct contact with children and [ensure] that children are appropriately involved and consulted."⁴²⁹ Not only should the Commissioner be mandated to involve children, the

Committee emphasizes that such involvement should be meaningful and effective. The Office of the Children's Commissioner is the most obvious place for such participation to start. As one example, the New Zealand Children's Commissioner is assisted by a young people's reference group, providing the Office with representation and perspectives from children across the country.

The Committee has concluded that **the Children's Commissioner should be endowed not simply with a right to hear from children, but with a statutory responsibility to do so meaningfully.** Marilyn McCormack at the Newfoundland and Labrador Office of the Child and Youth Advocate highlighted this need:

I think it should be in all children's legislation. That is what we advocate. In our legislation, it says that we have a right to meet with children and

⁴²⁶ Petitat-Côté and Sakstein testimony.

⁴²⁷ Julien testimony.

⁴²⁸ Ross testimony.

⁴²⁹ Committee on the Rights of the Child, *General Comment No. 2*, para. 16.

youth and interview them. I think it should be in all the children's legislation that children should be heard. I think that would be excellent.⁴³⁰

Our Committee believes that through these means, Canada's Children's Commissioner could serve as a powerful catalyst for legislative, policy and attitudinal change.

RECOMMENDATION 20

The Committee recommends that Parliament enact legislation to establish an independent Children's Commissioner to monitor implementation of the *Convention on the Rights of the Child*, and protection of children's rights in Canada. The Children's Commissioner should report annually to Parliament.

C. FEDERAL INTERDEPARTMENTAL IMPLEMENTATION WORKING GROUP FOR CHILDREN

1. The Organization

In addition to emphasizing the need for an independent Children's Commissioner to monitor children's rights in Canada, witnesses expressed particular concern about the fragmentation within the federal government with respect to children's issues. Nicolas Steinmetz of the Fondation pour la promotion de la pédiatrie sociale described the silos that currently exist within governments and departments at the federal and provincial levels:

We must remember that it truly does take a village to raise a child. The villages of yesterday have been replaced by a much more complex society that acts through legislation, regulations and government policies from various departments.

When we have to approach representatives of a department about funding for social paediatrics, we realize that we are talking with public servants who also work in silos. For example, if Dr. Julien wants to help children succeed in school, he must also work in cooperation with people from the department of education. However, the people in the department of education believe that child development falls under the department of health and that they have no role to play in this matter. It is difficult to make these people understand that, when it comes to things like human

⁴³⁰ Marilyn McCormack, Deputy Advocate, Office of the Child and Youth Advocate, Newfoundland and Labrador, testimony before the Committee, 13 June 2005.

development, society as a whole is involved and that the way our government is organized does not reflect public needs but rather illustrates the need of government to change the way it does things, and it is not always the same thing.⁴³¹

Following up on the recommendations of numerous witnesses, **the Committee recommends that the federal government establish an interdepartmental implementation working group** entrusted with ensuring the protection of children's rights across the federal government in order to improve compliance with and implementation of the *Convention on the Rights of the Child* within government itself.

When Canada first ratified the Convention in 1991, responsibility for coordinating implementation of the Convention and reporting to the Committee on the Rights of the Child rested with the Department of Justice and Health Canada's Children's Bureau. Today, the Department of Justice and the Division of Childhood and Adolescence within the Public Health Agency are the primary agents responsible for compiling the federal government's portion of the country report to the UN.

However, witnesses emphasized that housing reporting responsibility within these two departments is not enough. Multiple agencies across the federal government deal with issues relating to children's rights – what is needed is a coordinating agency to institutionalize the links and responsibilities of these various departments. As noted by the UNICEF Innocenti Research Centre,

it is not usually possible to bring all matters covered by the [Convention] under one government agency, because the actions of more or less all government agencies impact upon children's lives. Past experience has given visibility to the dangers of the marginalization which might result from giving responsibility for children's policy to a single unit.⁴³²

The proposed implementation working group would coordinate activities, policies and laws for children's rights issues across government – the departments of Justice; Citizenship and Immigration; Human Resources and Skills Development; Social Development; Public Safety and Emergency Preparedness; Canadian Heritage; Indian Affairs and Northern Development; Foreign Affairs; and the

⁴³¹ Steinmetz testimony.

⁴³² UNICEF Innocenti Research Centre, *Summary Report*, p. 15.

Canadian International Development Agency – in order to ensure accountability for all government actions affecting children. Our Committee would be interested in seeing such an implementation working group housed within the Privy Council Office, as the body most linked to interdepartmental cooperation efforts. However, if this should prove impractical, the Committee suggests that this working group be chaired by the Department of Justice, as the department with the closest links to legislation touching all aspects of children’s rights across Canada.

During our fact-finding missions in Europe, our Committee noted that numerous countries have established similar coordinating bodies to more effectively implement their Convention obligations. For example, Sweden’s Ministry of Health and Social Affairs has a Coordination Secretariat whose role is to work at a general level to coordinate processes so as to ensure that the child’s perspective is reflected in all levels of government policy, as well as to prepare Sweden’s country report to the UN Committee.⁴³³ The United Kingdom also has a cross-departmental Cabinet Subcommittee on Domestic Affairs (Children’s Policy) that consists of representatives from all departments and meets regularly to ensure cross-departmental implementation of the Convention in England.⁴³⁴ Judy Finlay emphasized the need for federal leadership in this regard:

[W]e need an office internal to the federal government to implement operationally the National Plan of Action and the Convention. We are provincial authorities. We monitor and ensure adherence to provincial and federal legislation that touches our children only provincially, but without coordinated and centralized leadership there is no meaningful national commitment to the principles and the objectives of the convention.⁴³⁵

2. Specific Roles of the Implementation Working Group

Our Committee recommends that the implementation working group have multiple roles – coordination and implementation; monitoring; promotion of Canada’s National

⁴³³ Carin Jahn, Director, Child Policy, Swedish Ministry of Health and Social Affairs, testimony before the Committee, 31 January 2005; Swedish Ministry of Health and Social Affairs, “Follow-up of the National Strategy to Realise the United Nations *Convention on the Rights of the Child* in Sweden,” Fact Sheet No. 10, June 2001.

⁴³⁴ Anne Jackson, Director of Strategy, Children, Young People and Families Directorate, U.K. Department for Education and Skills, testimony before the Committee, 10 October 2005.

⁴³⁵ Finlay testimony, 21 February 2005.

Plan of Action, *A Canada Fit for Children*; and ensuring enhanced visibility for both children and children's rights.

a) Child Impact Analyses – Assessing Legislation from a Children's Rights Perspective

The implementation working group should be entrusted with primary responsibility for ensuring that all federal legislation conforms with Canada's obligations under the *Convention on the Rights of the Child*. The working group should undertake an extensive review of all existing and proposed legislation using the Convention as a checklist. As stated by the Committee on the Rights of the Child, this review should

...consider the Convention not only article by article, but also holistically, recognizing the interdependence and indivisibility of human rights. The review needs to be continuous rather than one-off, reviewing proposed as well as existing legislation.⁴³⁶

Katherine Covell emphasized that in order to achieve this aim, **the implementation working group should develop a child-based analysis for its approach to legislation and policy**. This would mean viewing legislation through a children's rights lens – conducting a “child impact assessment” to determine the potential effects that any proposed legislation could have on children. The Committee on the Rights of the Child describes this process:

Ensuring that the best interests of the child are a primary consideration in all actions concerning children (art. 3 (1)), and that all the provisions of the Convention are respected in legislation and policy development and delivery at all levels of government demands a continuous process of child impact assessment (predicting the impact of any proposed law, policy or budgetary allocation which affects children and the enjoyment of their rights) and child impact evaluation (evaluating the actual impact of implementation).⁴³⁷

Joan Durrant of the University of Manitoba told our Committee that Canada can look to government practices in Sweden for a model of how this can be done. As noted by Kathy Vandergrift, “there are processes in this government to assess impact on other

⁴³⁶ Committee on the Rights of the Child, *General Comment No. 5*, para. 18.

⁴³⁷ *Ibid.*, para. 45.

things.”⁴³⁸ Once such impact assessments were developed they would simply “become part of the decision-making package.”⁴³⁹

The Committee believes that using such assessments and adopting a checklist approach could work to ensure that children’s rights and Canada’s international obligations under the Convention are actually enforceable in Canadian law. Although not necessarily apparent at first glance, almost every area of government policy and law affects children to some degree: consider the example of health, environmental, and economic legislation. As stated by the UNICEF Innocenti Research Centre in its Digest on monitoring bodies for children’s rights, “there is no such thing as a child-neutral economic policy.”⁴⁴⁰

b) Ongoing Consultations

Based on criticisms of the current consultation process in Canada, our Committee believes that **another role of the implementation working group should be hold out ongoing consultations with the provinces, territories, and stakeholders – including children – with the aim of ensuring that Canada’s laws continue to comply with our Convention obligations.** The working group could play a crucial role in organizing the consultations and discussions recommended throughout this report. The working group would take on the role of coordinator, organizing consultations among relevant government bodies to ensure that the provinces are aware of their obligations and the legislative and policy solutions available. The Committee notes that in a federal system, networks often work better than other models. What is needed is a system to enhance collaboration. The challenge is to institutionalize this process.⁴⁴¹

Establishing the implementation working group is a necessary response to the criticisms of the Committee on the Rights of the Child concerning the ability of the

⁴³⁸ Vandergrift testimony, 23 October 2006.

⁴³⁹ *Ibid.*

⁴⁴⁰ UNICEF Innocenti Research Centre, *Innocenti Digest*, No. 8, p. 3.

⁴⁴¹ The Honourable Senator Landon Pearson, UN Secretary General’s Study on Violence Against Children, North American Regional Consultations, Toronto, 4 June 2005.

Continuing Committee of Officials on Human Rights, or any other body, to effectively coordinate respect for children's rights in Canada:

[T]he Committee remains concerned that neither the Continuing Committee of Officials on Human Rights nor the Secretary of State for Children and Youth is specifically entrusted with coordination and monitoring of the implementation of the Convention.

The Committee encourages the State party to strengthen effective coordination and monitoring, in particular between the federal, provincial and territorial authorities, in the implementation of policies for the promotion and protection of the child... with a view to decreasing and eliminating any possibility of disparity or discrimination in the implementation of the Convention.⁴⁴²

c) Reporting to the United Nations

Having already emphasized the need for a streamlined, more efficient and transparent process in the production of Canada's reports to the Committee on the Rights of the Child and all UN treaty bodies, our Committee notes that Canada's next report under the *Convention on the Rights of the Child* is due on 11 January 2009. The government should immediately initiate consultations for this momentous task, given that Canada's last report took approximately three years to develop. The current deadline is less than two years away.

Responding to the UN Committee's and witnesses' concerns, **the Committee suggests that, when established, the implementation working group prepare the federal portion of Canada's country report to the Committee on the Rights of the Child**, and work closely with the Continuing Committee to assist as needed during consultations with the provinces and territories. The working group would be uniquely situated to respond to this demand, given its ongoing consultations with other jurisdictions and stakeholders.

Fred Milowsky, Deputy Child and Youth Officer of British Columbia, noted that the NGO report tends to be issued in *reaction* to the government's report, creating an

⁴⁴² Committee on the Rights of the Child, *Concluding Observations*, para. 10-11.

“adversarial rather than a collaborative relationship.”⁴⁴³ Mr. Milowsky emphasized the need for meaningful dialogue between government and the NGO community in the preparation of their respective reports to the UN Committee.

The Committee emphasizes that **the implementation working group should also be mandated to include children in the preparation of the country report** in order to arrive at a better understanding of the children whose rights are most directly affected by the policies and legislation under discussion. This could take place through ongoing consultations and the establishment of direct mechanisms during preparation of the report to facilitate dialogue.

However, the need to streamline and simplify does not end with Canada’s own preparation of its country report. The OHCHR has recognized that its own demands are onerous and is currently examining how best to streamline UN treaty bodies’ reporting process. Every treaty body currently faces extreme backlogs in terms of their receipt and examination of country reports and is falling behind. In 2004, Canada donated \$5 million over three years in core funding to the OHCHR to assist it in standardizing and streamlining this process, and in October 2005 it donated another \$3 million. Although these discussions are ongoing, one of the immediate results has been the division of the Committee on the Rights of the Child into two chambers. In 2006, the UN Committee considered reports in two parallel chambers of nine Members each to clear up the backlog of reports.

By making this donation, Canada has already begun to assist the reform process. **The Committee supports reinforcing the positive direction that the OHCHR has taken to ensure the establishment of a permanently simplified reporting procedure that both allows for in-depth exploration of individual countries’ implementation of the Convention, and also eases the burden on States Parties which currently have to spend years preparing their reports.**

Finally, the Committee suggests that the implementation working group be charged with preparing the follow-up Government Response to the UN Committee’s

⁴⁴³ Milowsky testimony.

Concluding Observations, to be tabled in Parliament. This response should detail the federal government's reaction and provide answers to each of the UN Committee's suggestions and recommendations.

Ultimately, our Committee echoes the words of Kay Tisdall, who said that reporting to the UN Committee will be “an empty exercise”⁴⁴⁴ unless Canada puts enough effort into the entire process. As stated by the Committee on the Rights of the Child in its General Comment on implementation,

The reporting process provides a unique form of... accountability for how States treat children and their rights. But unless reports are disseminated and constructively debated at the national level, the process is unlikely to have substantial impact on children's lives.⁴⁴⁵

3. The Need for an Education Strategy

In addition to this focus on legislation and reporting requirements, **the implementation working group should work towards awareness-raising, and create a “well-resourced, comprehensive national communication strategy”⁴⁴⁶** to ensure dissemination of information about children's rights to children, advocates, decision-makers, professionals, front-line workers, and the public at large. In line with suggestions made in section A of this chapter, our Committee believes that this strategy should be broad in scope; it should include distribution of information on governmental and independent bodies involved in implementation of the Convention, and how to contact them. The working group should ensure that such information is freely distributed in schools.

The Committee suggests that the working group also ensure wide distribution of the Convention itself, both in a child-friendly version and in many languages, to ensure that it is made accessible and meaningful to the children and families most marginalized in Canadian society.

⁴⁴⁴ Tisdall testimony.

⁴⁴⁵ Committee on the Rights of the Child, *General Comment No. 5*, para. 71.

⁴⁴⁶ Williams, brief submitted to the Committee.

Witnesses in Canada and abroad, as well as the Committee on the Rights of the Child, emphasized that raising awareness about children's rights issues is an absolute obligation under article 42 of the Convention. Not only does this obligation require information-sharing about the Convention itself, but it necessitates widespread dissemination of Canada's country report, the UN Committee's Concluding Observations, and the Government Response, to all interested stakeholders. The Committee suggests that the newly established implementation working group consider the example of Sweden, which puts its country report in edited book format after submission to the UN, distributing copies to NGOs and local authorities as a basis for future discussion.⁴⁴⁷

4. The Results

The benefits of establishing such an implementation working group have been made clear to the Committee. International case studies confirm that

... establishing children's rights-focused permanent institutions and structures within governments, has been critical to the pursuit of coordinated implementation of the [Convention] – and to the [Convention] becoming a visible reference for the public at large. With a more coordinated approach, the involvement of civil society becomes more likely, as does the ability to incorporate the child's perspective in policy-making. These mechanisms have helped place children on the national agenda, promoted articulation of child related activities, developed a strategy for the realization of children's rights and assessed progress.⁴⁴⁸

As well, the Committee notes that mandating a role for children's involvement in the implementation working group's activities is crucial to the effective application of children's rights and the rights-based approach in Canada.

RECOMMENDATION 21

The Committee recommends that an interdepartmental implementation working group for children's rights be established in order to coordinate activities, policies, and laws for children's rights issues.

⁴⁴⁷ Jahn testimony.

⁴⁴⁸ UNICEF Innocenti Research Centre, *Summary Report*, p. 16.

D. DATA COLLECTION

As a final point, **our Committee wishes to emphasize the potential for data collection that both the Children’s Commissioner and the working group could generate.** Witnesses across Canada deplored the lack of national data on children’s issues. While statistics may be collected provincially or even locally, there is no coordinating mechanism to bring such research together to create a national portrait of children in Canada. Witnesses **called for the government to improve data collection in a variety of areas affecting children’s rights.**

The Committee recognizes that this matter is not simple. Precise data are extremely difficult to find and may not be useful in and of themselves. It is the interpretation and analysis that bring the numbers to life.

Yet even general national figures can help stakeholders to better understand an issue, to build a more comprehensive system of monitoring gaps in children’s rights and assessing the impact of initiatives, and to develop intervention strategies. Witnesses emphasized the importance of good statistics and their ability to get organizations mobilized around an issue. **Both the Children’s Commissioner and the federal implementation working group can play an important role in collecting such statistics, or in creating dialogue with organizations doing data collection, in order to create a national database on issues affecting children.**

E. THE COMMITTEE’S COMMENTS

This Committee’s mandate was to examine and report upon Canada’s international obligations with respect to the rights and freedoms of children and whether Canada’s law, policy and practices can be said to comply with the requirements of the *Convention on the Rights of the Child*. Based on the comments and criticisms of the Committee on the Rights of the Child, as well as two years of hearings in Canada and abroad, the Committee has come to realize that full compliance, and thus the comprehensive protection of children’s rights in Canada, cannot occur without effective implementation. That effective implementation is lacking.

In response to concerns expressed throughout its hearings on children's rights, the Committee attempted to address "the gulf between the rights rhetoric and the realities of children's lives."⁴⁴⁹ In order to do so, we framed our deliberations within the context of the rights-based approach set out in the Convention, working from the starting point that children are one of the most inherently vulnerable and unrepresented groups in Canada. Our Committee attempted to find solutions that would ensure respect for children's rights in a holistic way throughout Canadian society.

In addition to specific recommendations concerning the rights of particularly vulnerable groups of children, this approach led the Committee to recommend the creation of an interdepartmental implementation working group to coordinate implementation of the Convention throughout the federal government. It also led us to recommend the establishment of a Children's Commissioner, a monitoring mechanism intended to ensure effective implementation of children's rights, as well as government accountability to the public as a whole and to children in particular. Throughout its recommendations, the Committee highlighted the absolute necessity of facilitating children's involvement in all mechanisms affecting their rights. The voices, not simply the choices, of children need to be heard at a national level.

Our Committee insists upon the need to act now to preserve the lives and protect the rights of some of the most vulnerable members of our society.

Beyond the specific issue of children's rights, this study also emphasized our Committee's observations made in *Promises to Keep* about the inefficiency and inadequacy of Canada's mechanisms for ratifying and implementing international human rights treaties more generally. Only when Canada truly lives by its promises of compliance can this country be assured of living up to its international human rights obligations. The Committee believes that Canada needs to bolster the effectiveness and accountability of its ratification process in order to truly claim the role of leader in the human rights field. A reputation that extends beyond its own borders but does not apply at home is not one worth having. The final chapter of this report will outline our

⁴⁴⁹ UNICEF Innocenti Research Centre, *Innocenti Digest*, No. 8, p. 4.

Committee's template for action with respect to implementing international human rights obligations in Canada.

Chapter 18 - Ratification and Incorporation of International Human Rights Treaties: A Framework for Change

Months of testimony – complemented by the observations, criticism, and recommendations of the Committee on the Rights of the Child – have convinced our Committee of the inadequacy of Canada’s approach to implementing the *Convention on the Rights of the Child* and, by extension, its approach to the adoption and implementation of international human rights treaties more generally in Canada. Neither inclusive nor transparent, the mechanisms currently in place for negotiating, ratifying, and incorporating such treaties are inefficient and ineffective, and only occasionally lead to real compliance. **At the heart of the problem is the fact that there is no modern, transparent, and democratic treaty implementation process understood and accepted in Canada. No institution has ultimate responsibility for ensuring that international human rights conventions are effectively implemented.** The Committee’s hearings surrounding the *Convention on the Rights of the Child* demonstrated that because no such process exists, Canada has been unable to achieve the Convention’s objectives and to live up to the expectations created upon signature and ratification.

We cannot turn back time to suggest improved means of approaching the *Convention on the Rights of the Child*. However, the Committee can suggest options for transforming the country’s approach to international human rights treaties in the future.

Based on what it has heard, the Committee has arrived at a framework – outlined in this chapter – for improving the process whereby Canada ratifies and incorporates its international human rights obligations. This proposal calls for enhanced levels of

accountability that will help to translate Canada's international human rights obligations into meaningful law, policy, and practice.

A. INITIATION OF NEGOTIATIONS

1. Consultation and Cooperation

In terms of the early stages of any treaty negotiation process, the Committee notes that Canada's traditional role and position in the international arena are such that Canada often takes on a leadership role during negotiations leading up to the drafting and adoption of UN human rights treaties. Certainly, the federal government is generally at the forefront in building international consensus. These negotiation processes are often long, and can be drawn out over a number of years, or even decades.

Transparency and communication are accordingly essential at this stage. Witnesses' concerns with respect to the ratification process highlighted the importance of ensuring an early start to the awareness-raising and consultative processes that are essential to the proper functioning of any implementation mechanism. Currently, Parliament plays no role in the process. Our Committee suggests that as soon as international treaty negotiations begin, measures should be initiated at home to ensure national awareness of the issues at stake and the obligations that may have to be undertaken by all levels of government in Canada. Information about the negotiations should be available on relevant government websites, and consultations with other jurisdictions, Parliament and other stakeholders should begin as soon as is practicable.

As noted in the *Labour Conventions Case*, the federal government cannot rely on its need to implement international treaty commitments as a basis for federal encroachment into areas of provincial jurisdiction. Implementation of international treaties where provincial laws and policies are also affected is the responsibility of the federal, provincial and territorial governments. An early launch of consultations would facilitate an increased level of federal-provincial-territorial cooperation in the long run. This could resolve some of the jurisdictional conflicts and coordination problems noted earlier in this report. As stated by Suzanne Williams of the International Institute for Child Rights and

Development, the solution lies in “setting up dialogue, which is a constant challenge in the federal system, but it is possible.”⁴⁵⁰ While many provincial witnesses expressed concern about the difficulties of jurisdictional coordination, they emphasized that informal networks such as those that could be created earlier on in the treaty negotiation process are important to making the system work. Bernard Richard, New Brunswick’s Ombudsman, said that he is concerned that we “lose a lot of time debating issues of jurisdiction when we have shown that informally, we have been able to overcome some of these issues.”⁴⁵¹ Informal information networks help provincial and territorial governments to know what is expected of them in terms of Canada’s commitments under any given international human rights treaty.

2. Getting the Process Started

The Committee has concluded that a new framework is needed to ensure that Canada lives up to its international obligations. Based on testimony heard, the Committee feels that federal, provincial, and territorial ministers responsible for human rights should take ownership of the process and work to develop more open and transparent consultations. As a first step, **Parliament and the provinces and territories should certainly be informed as soon as human rights treaty negotiations begin in order to get consultations under way.**

As already noted, numerous witnesses expressed concern that the Continuing Committee of Officials on Human Rights is ineffective: it lacks both political will and an effective mandate, and as currently constituted it is unable to fulfil the goals and recommendations set out in this report. Our Committee suggests remedying this situation by **transferring responsibility for the Continuing Committee from the Department of Canadian Heritage to the Department of Justice.** This approach was proposed by Joanna Harrington of the University of Alberta, who found it “quite shocking that Canada’s international human rights treaties are found within the Department of Heritage”⁴⁵² and noted that the current situation effectively marginalizes Canada’s

⁴⁵⁰ Williams testimony.

⁴⁵¹ Richard testimony.

⁴⁵² Joanna Harrington, Professor, Faculty of Law, University of Alberta, testimony before the Committee,

international human rights obligations. Housing responsibility for the Continuing Committee with the Department of Justice could ensure that the department responsible for monitoring and implementing federal laws across Canada is intimately aware of the international treaty obligations undertaken by the government, and has the opportunity to ensure that those laws are put into action. Such a move would also ensure that international human rights obligations are put on par with the Department of Justice's obligation to review all legislation for Charter compliance.

RECOMMENDATION 22

The Committee recommends that responsibility for the Continuing Committee of Officials on Human Rights be transferred immediately from the Department of Canadian Heritage to the Department of Justice.

3. National Interest Analysis

The Committee suggests that the government ensure that Canadian ministers responsible for human rights are mandated to begin broad-based consultations to examine the implications of the particular treaty under negotiation. As a first step in this process, these ministers could instruct the Continuing Committee of Officials on Human Rights to produce a report to be distributed to all involved in the consultations – Parliament, all levels of government, and civil society stakeholders. Similar to the “National Interest Analysis”⁴⁵³ produced by the Australian government, this report could be an explanatory document setting out the goals and consequences of the treaty in question, including: a description of the obligations imposed; the legal, jurisdictional, and financial implications; and the economic, environmental, social and cultural effects of the treaty.⁴⁵⁴ The report should be disseminated widely, and should be made publicly available on government websites. Following the report's distribution, the ministers should also provide an appropriate forum for response from all stakeholders.

26 September 2005.

⁴⁵³ For a more complete description of the National Interest Analysis, see: Parliament of Australia, Joint Standing Committee on Treaties, “Committee Establishment, Role, and History,” available at: www.aph.gov.au/house/committee/jsct/ppgrole.htm

⁴⁵⁴ Harrington, “State Actors and the Democratic Deficit,” p. 41.

In addition to enabling all stakeholders to provide input with respect to the international human rights obligations in question, the proposed report and consultation process should be part of the federal government's standard procedure for reviewing and analyzing existing federal and provincial laws to determine whether pre-existing laws are in compliance, and whether any amendment or new legislation is required in order to comply with the treaty obligations. Witnesses commented that such consultations would give Parliament, provinces and territories, and interested stakeholders an opportunity to assess the adequacy of government plans for incorporation and implementation.

The suggested consultations would facilitate the government's domestic negotiation process. They could be carried out simultaneously with international negotiations and would delve into the broad principles at stake. Their purpose would be to allow the government to get a preliminary sense of how the various stakeholders approach the issue or treaty under consideration and how domestic law and policies will be affected. They would also enable interested stakeholders to learn of the issues and take any measures that they consider necessary. The point is to enhance dialogue, cooperation, and coordination.

B. SIGNATURE AND RATIFICATION

1. At the Federal Level – A Formal Declaration of Intent

In *Promises to Keep*, our Committee called for stronger means to ensure that Canada directly implements its international human rights obligations. This study on children's rights only served to reinforce our earlier concerns. A number of witnesses appearing before the Committee emphasized the need for Canada's international human rights obligations to be specifically incorporated into Canadian law through some form of enabling legislation.⁴⁵⁵ They argued that one of the glaring problems with respect to

⁴⁵⁵ Among the countries investigated by the Committee, Norway went the furthest in this regard. A dualist country that abides by a mix of common law and civil law traditions, its government incorporated the *Convention on the Rights of the Child* and the two Optional Protocols into Norway's *Human Rights Act* in 2003. This law states that the Convention – as well as the *International Covenant on Civil and Political Rights*, the *International Covenant on Economic, Social, and Cultural Rights*, and the *European Convention on Human Rights* – shall be binding in Norwegian law, and that these international instruments “shall take precedence over any other legislative provisions that conflict with them.” This is in addition to

Canada's approach to the *Convention on the Rights of the Child* is this lack of direct incorporation. As stated by Brent Parfitt:

We have signed it, we have ratified it, but we have not domesticated it – indeed, made it a law of our land. While I appreciate there are federal-provincial complications with that, I think it is still possible that Canada can give more priority to implementing this convention.⁴⁵⁶

In response to these concerns, **the Committee suggests that the federal government** table a “Declaration of intent to comply” in Parliament signalling the executive branch’s intent to proceed towards signature of the international instrument.

The Committee is fully aware of the difficulties of adopting specific enabling legislation with respect to expansive human rights treaties that deal with broad principles and touch on the legislative powers of all jurisdictions. The reasoning contained in the *Core document forming part of the reports of States Parties: Canada* – as cited in Chapter 2 – is valid. Peter Dudding of the Child Welfare League of Canada and Dr. Claire Crooks of the CAMH Centre for Prevention Science told the Committee that concrete enabling legislation can sometimes lead to jurisdictional complexities and necessitate the establishment of mechanisms that cannot be effectively sustained in particular contexts, thus causing more harm than good. As noted in the Inter-Parliamentary Union Handbook on Child Protection:

Legislation that fully conforms to international standards concerning the rights of children, but is impossible to implement because the necessary infrastructure does not exist, does little and may even be counterproductive in some respects.⁴⁵⁷

having strengthened reference to the *Convention on the Rights of the Child*'s principles in other domestic child-related legislation.

Norwegian officials were quick to emphasize to our Committee, however, that the Convention’s incorporation into domestic law is of limited practicality. While it raises awareness and the profile of the Convention in Norway, and may restrict parliamentary or government discretion, it has yet to demonstrate a significant impact on children’s rights in the country – particularly given the general nature of the standards outlined in the Convention. As stated by Haktor Helland, Director General at the Norwegian Ministry of Children and Family Affairs, “I don’t think it will have any practical implication for child policy.” (See testimony of Haktor Helland, Director General, Norwegian Ministry of Children and Family Affairs; Petter Wille, Deputy Director General, Global Section, Norwegian Ministry of Foreign Affairs; and Jon-Kristian Johnsen, Director, Childwatch International Research Network, testimony before the Committee, 14 October 2005.)

⁴⁵⁶ Parfitt testimony.

⁴⁵⁷ Inter-Parliamentary Union, *Child Protection*, pp. 26-27.

However, the tabling of a Declaration of intent to comply would officially signal the federal government's intentions. **This process could simply involve tabling the treaty in Parliament, accompanied by two documents: a Declaration that the federal government has reviewed all relevant legislation and assures Parliament that Canada's laws are in compliance with the treaty obligations; and a formal statement that the federal government agrees to comply with the treaty.**

Tabling such a Declaration of intent would fulfil the demands of an effective democracy by ensuring that the human rights in question are clearly acknowledged as rights, and no longer a question of political will. It would also firmly establish the government's interpretation of those rights: the government would no longer be able to argue, as it did in *Baker*, that it is not bound domestically by its international human rights commitments. Courts would be able to choose interpretations of the law similar to those contained in the international treaty. This approach could assuage criticisms that the courts have too great a role in interpreting and applying international instruments, often leading to varying results,⁴⁵⁸ and it could give the treaty "teeth," allowing for the possibility of real repercussions in courts and elsewhere when obligations are ignored.

Tabling a Declaration of intent would also contribute to awareness-raising – both about the treaty itself, and as to the meaning of ratification. Witnesses expressed deep concern that few in Canada know that actual implementation of a treaty is necessary for it to be enforceable in domestic law, and that ratification in no way fully binds the nation. As stated by Martha Mackinnon of Justice for Children and Youth:

I first discovered [that ratification did not mean that a treaty was necessarily enforceable in Canadian law] a month or two into my first public international law course... and I was horrified. I felt cheated. It was the first time, even as a law student, that I understood that the whole weight of a state could sign something and then say, 'But we do not really mean it.' I do not think Canadians generally think that is the case.⁴⁵⁹

⁴⁵⁸ Vandergrift testimony, 14 February 2005.

⁴⁵⁹ Mackinnon testimony.

2. Working in a Federal System

Noting witnesses' concerns with respect to the lack of dialogue and coordination between jurisdictions, **the Committee suggests that once the federal government has filed a Declaration of intent, it use the Continuing Committee or any other mechanism as a forum to continue discussions with the provinces and territories.**

Witnesses emphasized that, once the federal government has signed a treaty and, by extension, created an expectation for the provinces and territories to abide by it through their legislation and policies, the government cannot then walk away, just as it cannot place the blame for lack of compliance on jurisdictional issues. Ongoing dialogue is a crucial part of ensuring compliance and effective implementation across Canada.

3. Upon Ratification

Filing a Declaration of intent in Parliament and ensuring ongoing consultations would ensure both that the Executive still has full powers to sign and ratify international human rights treaties, and that the process would be more open and accountable to the public. In order to further enhance this process, **the Committee suggests that after the Executive officially ratifies a treaty, the international instrument be tabled in both Houses of Parliament.** As stated by Ken Norman of the University of Saskatchewan when he appeared before this Committee in 2001, “[t]he democratic deficit can be dealt with by some tabling in Parliament ahead of time, before ratification, to begin the debate politically about these norms.”⁴⁶⁰

C. POST-RATIFICATION – ENSURING EFFECTIVE IMPLEMENTATION OF CANADA’S INTERNATIONAL TREATY OBLIGATIONS

1. The United Nations Reporting Requirement

Going beyond the ratification process to make recommendations concerning international human rights treaties already in existence, as well as those yet to come,

⁴⁶⁰ Ken Norman, Professor, University of Saskatchewan, testimony before the Committee, 11 June 2001.

witnesses emphasized the need for more efficiency, transparency, and accountability in the process for reporting to UN treaty bodies. As already noted, the current process is cumbersome and inefficient – a problem both for treaty bodies that must read and analyze the reports,⁴⁶¹ and for the ministers and Continuing Committee of Officials on Human Rights that must deal with the complexities of jurisdictional coordination.

Tara Ashtakala of the Canadian Coalition for the Rights of the Child and Maxwell Yalden emphasized that one of the first steps towards reforming the reporting process could be to ensure the responsible ministers guarantee that the Continuing Committee abide by realistic timeframes. They commented that **the Continuing Committee should begin its consultations earlier, giving provinces and territories ample forewarning of the reporting requirements** – knowing that it can take years to develop a comprehensive report to the UN treaty bodies, and that these country reports are required every four or five years depending on the treaty.⁴⁶² Our Committee believes that **Parliament should also be given a place at the table during these consultations, and that a specific invitation should be extended to parliamentarians with expertise in the particular issue under discussion.**

The Committee notes that once these reports are prepared, Parliament has an important role to play in awareness-raising and enhancing government accountability by monitoring compliance. Witnesses emphasized the lack of follow-up once UN committees issue their Concluding Observations. Echoing the views of many, Kathy Vandergrift told our Committee that “[c]urrently the reports on Canada go nowhere.”⁴⁶³

Following suggestions from Kathy Vandergrift, Joanna Harrington, and Brent Parfitt, the Committee has concluded that **Canada’s country reports, the UN treaty bodies’ Concluding Observations, and a follow-up Government Response should be tabled in Parliament and subject to committee scrutiny.** This is similar to the practice in

⁴⁶¹ See comments of Maxwell Yalden and the Committee on the Rights of the Child in its Concluding Observations, Chapter 2, section D2a.

⁴⁶² As an example, while the *Convention on the Rights of the Child* requires country reports every five years, the *Convention Against Torture* and the *Convention on the Elimination of All Forms of Discrimination against Women* require reports every four years.

⁴⁶³ Vandergrift testimony, 23 October 2006.

countries such as Sweden, which tables the Concluding Observations of the Committee on the Rights of the Child with its Parliament. In Canada, parliamentary committees could ask the Chair of the relevant UN treaty body to appear and to go through the Concluding Observations. They could also call on advocacy groups and individual experts to comment on the documents and offer observations about Canada's compliance with its international obligations. Finally, such committees could call on government ministers and department officials to respond and explain their position. This approach echoes the comments of Maxwell Yalden:

I also share the view of more Parliamentary scrutiny of these reports... Once the report is prepared, perhaps Parliament could have a look at it. Certainly, when the Committee on the Rights of the Child or the Human Rights Committee submits its concluding observations, there should be some form of scrutiny by [the Senate Human Rights] [C]ommittee. They should call government witnesses to explain whether the [government] is in breach of one or another of the obligations set out in these covenants. That would be helpful. That would keep the government's feet to the fire, and that would be a good thing.⁴⁶⁴

Such an approach would ensure the institutionalization of continued consultation and scrutiny of the implementation of Canada's international human rights obligations.⁴⁶⁵ Not only would parliamentary scrutiny of these reports improve government accountability, it could also provide an important forum for public input, as well as education and awareness-raising by ensuring widespread dissemination of the reports. Through this process, parliamentary committees might even formulate solutions to some of the issues discussed. Parliamentary scrutiny should not be a closed process, but one that is brought to the attention of all concerned citizens. As stated by the Committee on the Rights of the Child in its General Comment on implementation:

The reporting process provides a unique form of... accountability for how States treat children and their rights. But unless reports are disseminated and constructively debated at the national level, the process is unlikely to have substantial impact on children's lives.⁴⁶⁶

⁴⁶⁴ Yalden testimony.

⁴⁶⁵ Harrington, "State Actors and the Democratic Deficit," p. 41.

⁴⁶⁶ Committee on the Rights of the Child, *General Comment No. 5*, para. 71.

During our hearings in Sweden, an all-party network of parliamentarians dealing with the protection of children's rights told this Committee that in its experience, Parliament is the best forum for exposing the issues raised by the Concluding Observations.⁴⁶⁷ The Inter-Parliamentary Union Handbook on Child Protection notes that,

Parliaments and their members... have the capacity not only to influence the decisions and actions of government but also to connect with communities and constituencies to influence opinions and actions...

As opinion leaders and representatives of the people, parliamentarians also play an important advocacy role, raising awareness on specific societal issues of concern in their constituencies as well as at national and international levels.⁴⁶⁸

Ultimately, the UN reporting process is one of consciousness-raising and moral suasion, as the UN treaty bodies themselves lack any power of enforcement. Our Committee's recommendations can help to add weight to that process. A member of the Committee on the Rights of the Child observed that the involvement of parliamentarians creates an important opportunity for instigating change in democratic societies.⁴⁶⁹

2. Use of International Instruments When Proposing New Legislation and Policy

Finally, practically all witnesses appearing before the Committee sought some form of assurance that all new legislation proposed by the federal government and passed by Parliament will conform to Canada's international human rights obligations.

The Committee heard that currently all government departments must certify that any proposed new legislation and policy is in compliance with the *Canadian Charter of Rights and Freedoms*. The Minister of Justice is required by statute to ensure the Charter compliance of proposed government legislation.⁴⁷⁰

Yet, although the Supreme Court of Canada has ruled that the Charter should generally be presumed to provide at least as much protection as those rights enshrined in

⁴⁶⁷ Swedish network of Parliamentarians, testimony before the Committee, 31 January 2005.

⁴⁶⁸ Inter-Parliamentary Union, *Child Protection*, p. 22.

⁴⁶⁹ Committee on the Rights of the Child, testimony before the Committee, 28 January 2005.

⁴⁷⁰ *Department of Justice Act*, R.S.C. 1985, c. J-2, s. 4.1; and *Statutory Instruments Act*, R.S.C. 1985, c. S-22, s. 3.

international human rights instruments,⁴⁷¹ the Committee does not believe that this is a strong enough guarantee.

The Committee suggests that the government comprehensively and systematically consider Canada's major international human rights treaty commitments when drafting legislation and policy. Similar to the approach used for the Charter, the government should certify that all legislation passed is in compliance with Canada's international human rights obligations. In addition, the Committee believes that it is important for those who draft laws to be given training with respect to international human rights law, in order to ensure their knowledge of relevant international conventions and the concepts and terminology used. As stated by Joanna Harrington:

Mainstreaming international human rights obligations as legal obligations and making it an obligation of the Justice Department to ensure that, in addition to being Charter compliant, legislation is compliant with international human rights treaties would attract further attention to these obligations and ensure their ongoing scrutiny and implementation.⁴⁷²

Through its hearings, the Committee has come to believe that this step is essential to the protection of human rights and compliance with Canada's international human rights obligations. Moreover, as most international human rights are already well established in Canadian law, adding this extra process would not be an overly onerous task.

D. THE COMMITTEE'S COMMENTS

In light of witnesses' concerns, our Committee has concluded that both Parliament and civil society need to be assured of an enhanced role in the international human rights treaty ratification process. By striving to ensure better transparency, scrutiny and consultation, the government will be seen as increasingly accountable and compliant with international law, and Canada's international treaty obligations will gain legitimacy.⁴⁷³

⁴⁷¹ *Reference re Public Service Employee Relations Act (Alberta)*, [1987] 1 S.C.R. 313.

⁴⁷² Harrington testimony.

⁴⁷³ Harrington, "State Actors and the Democratic Deficit," p. 40.

There may be costs associated with implementing the more consultative process outlined in this chapter – particularly in terms of time. Yet, given that concerns about the ratification and incorporation process currently revolve around their cumbersome nature and lack of coordination among jurisdictions, the Committee believes that increased transparency and consultation would in fact result in reduced complexity and enhanced levels of cooperation, leading to better coordination and, in the long run, a more efficient use of time.

It is important to emphasize that witnesses before our Committee did not argue that Canada should rush into its international human rights commitments. Thus, the Committee has suggested a framework to promote consciousness-raising among all jurisdictions and stakeholders in order to ensure cooperation, coordination, and compliance with Canada’s international obligations at every level of government. This will help to generate a greater respect for international law by demonstrating that such legislation and obligations apply within a democratic context that holds governments and parliamentarians accountable to their nation.⁴⁷⁴

In summary, the Committee advocates establishment of a policy framework for the ratification and implementation of Canada’s international human rights obligations. This framework should consist of:

- **Notice to Parliament, the provinces and territories at the commencement of international human rights treaty negotiations, with an undertaking to begin consultations with Parliament, all levels of government, and stakeholders;**
- **Regular reporting on the progress of international treaty negotiations to Parliament, the provinces and territories, and the public;**
- **Production of a national impact study to be made available to all involved in the consultations;**
- **Regular feedback from those involved in the consultation process with the federal government;**
- **Tabling of a “Declaration of intent to comply” in Parliament signalling the executive branch’s intent to proceed towards signature of the international**

⁴⁷⁴ *Ibid.* p. 43.

instrument, accompanied by a reasonable timeframe for Parliament to provide its input before signature;

- **Tabling of the international instrument in Parliament once it has been ratified by the Executive, accompanied by an implementation plan including legal and financial implications, and a timetable for implementation. Parliament should be given sufficient time to provide input into this plan;**
- **Certifying that all new federal legislation passed is in compliance with Canada's international human rights obligations; and**
- **Developing a transparent and inclusive process to ensure consultation with Parliament and the public when preparing Canada's country reports to the various UN treaty bodies. Canada's country reports, the UN treaty bodies' Concluding Observations, and a follow-up Government Response should be tabled in Parliament and referred for committee scrutiny, subject to a fixed timeline for response.**

RECOMMENDATION 23

The Committee recommends that the federal, provincial and territorial ministers responsible for human rights meet immediately with renewed vigour to take ownership for effective consultations and implementation of Canada's international human rights obligations.

RECOMMENDATION 24

a) The Committee recommends that the federal government develop a new policy framework for the signature, ratification and implementation of Canada's international human rights obligations, including:

- **Notice to Parliament, the provinces and territories at the commencement of international human rights treaty negotiations, with an undertaking to begin consultations with Parliament, all levels of government, and stakeholders;**
- **Regular reporting on the progress of international treaty negotiations to Parliament, the provinces and territories, and the public;**
- **Production of a national impact study to be made available to all involved in the consultations;**
- **Ongoing dialogue between those involved in the consultation process with the federal government;**
- **Tabling of a "Declaration of intent to comply" in Parliament signalling the executive branch's intent to proceed towards signature of the international instrument, accompanied by a reasonable timeframe for Parliament to provide its input before signature; and**
- **Tabling of the international instrument in Parliament once it has been ratified by the Executive, accompanied by an implementation plan including legal and financial implications, and a timetable for implementation. Parliament should be given sufficient time to provide input into this plan.**

b) The Committee recommends that the federal government certify that all new federal legislation passed is in compliance with Canada's international human rights obligations.

c) The Committee recommends that the federal government develop a transparent and inclusive process to ensure consultation with Parliament and the public when preparing Canada's country reports to the various UN treaty bodies. Canada's country reports, the UN treaty bodies' Concluding Observations, and a follow-up Government Response should be tabled in Parliament and referred for committee scrutiny, subject to a fixed timeline for response.

Appendix A: Witnesses List

January 29, 2007

Repeal 43 Committee, Toronto:

Corinne Robertshaw, Founder/Coordinator.

York University:

Stuart Shanker, Professor.

Toronto University:

Faye Mishna, Associate Professor;

Martha Friendly, Childcare Resource and Research Unit.

World Vision – Canada:

Chris Derksen-Hiebert, Interim Director for Advocacy and Education.

UNICEF – Canada:

Lisa Wolff, Director, Advocacy and Education.

Family Service Association of Toronto:

Laura Rothman.

METRAC (Metropolitan Action Committee on Violence Against Women and Children):

Sudabeh Mashkuri, Vice-President of the Board.

YMCA Metro Toronto:

Corinne Rusch-Drutz, Director Advocacy and Communication.

Child and Family Services Advocacy:

Judy Finlay, Facilitator;

Nana, Devi, Lewesi, Cheryl, Lucilia, Marcus, Danielle, Julaine, Sarah and Aisha.

Centre of Excellence for Youth Engagement:

Stephanie Clark, Facilitator;

Simone, Jeremy, Joel and Nadia.

November 6, 2006

La Fondation pour la promotion de la pédiatrie sociale:

Dr. Gilles Julien, Social Paediatrician and President;

Dr. Nicolas Steinmetz, Director General.

UN Committee on the Rights of the Child:

Brent Parfitt, Member.

Conseil jeunesse de Montréal:

Marilou Filiatreault, President.

Programme régional d'accueil et d'intégration des demandeurs d'asile (PRAIDA) :

Claude Malette, Director;
Marian Shermarke, Representative.

Canadian Council for Refugees :

Janet Dench, Executive Director.

Beutel High School:

Tamira Cahana, Student;
Nathaniel Mayer-Heft, Student.

October 30, 2006***FUJA Unity:***

Linda Youngson, Representative;
Thelma Gillespie, Representative.

As individuals:

Agnes Lee;
Robert Marsh.

October 23, 2006***Canadian Coalition for the Rights of Children:***

Kathy Vandergrift, Chair;

October 2, 2006***Alliance of People Produced by Assisted Reproductive Technology:***

Barry Stevens, Founding Member.

Canadian Labour Congress:

Barbara Byers, Executive Vice-President;
Stephen Benedict, Director, International Department.

September 22, 2006***BC Child and Youth Advocacy Coalition:***

Adrienne Montani, Provincial Coordinator.

Covenant House:

Krista Thompson, Executive Director.

Community Action Program for Children (CAPC):

Sue Rossi, Representative.

Society for Children and Youth of British Columbia:

Jessica Chant, Executive Director.

September 21, 2006***MOSAIC:***

Victor Porter, Community Outreach Manager.

Separated Children Intervention Orientation Network:

Sister Deborah Isaacs, Representative

University of British Columbia:

Fiona Kelly, PhD Candidate.

Community Centre Serving Lesbian, Gay, Transgendered and Bisexual People and their Allies:

Chris Buchner, Youth Worker, GAB Youth Services.

Government of British Columbia:

Fred Milowsky, Deputy Child and Youth Officer of British Columbia.

Lower Mainland Purpose Society for Youth and Families:

Lynda Fletcher-Gordon, Executive Director.

As an individual:

Birgitta von Krosigk, Lawyer.

Parent Finders of Canada:

Jim Kelly, Legislative Chair.

Justice for Girls:

Asia Czapska, Housing Strategy Coordinator.

FREDA Centre for Research on Violence Against Women and Girls:

Angela Cameron, Research Associate;

Nasra Mire, Representative of Go-Girls (FREDA)

Hawa Mire, Representative of Go-Girls (FREDA).

September 20, 2006

Faculty of Education, University of Alberta:

Kristopher Wells, Department of Educational Policy Studies.

The Society for Safe and Caring Schools and Communities:

Will Simpson, Executive Director.

Families for Effective Autism Treatments (FEAT):

Gail Wilkinson, President;

Yvette Ludwig, Representative.

John Humphrey Centre for Peace and Human Rights:

Renée Vaugeois, Executive Manager.

Child and Youth Friendly Calgary:

Penny Hume, Executive Director.

Care of the Child Coalition:

Beverley Smith, Spokesperson for the United Caregivers Coalition.

Metis Nation of Alberta:

Fran Hyndman, Tripartite Manager;

Eileen Mustus, Provincial FASD Coordinator.

September 19, 2006***Lac La Ronge Indian Band, Indian Child and Family Services:***

Dexter Kinequon, Executive Director.

Yorkton Tribal Council – Child and Family Services:

Steven McArthur, Representative.

Ranch Ehrlo Society:

Geoff Pawson, Founder;

Deborah Parker-Loewen, Vice-President of Programs North.

Saskatchewan Youth In Care and Custody Network:

Jessica McFarlane, Provincial Outreach Coordinator.

As an individual:

Kearney Healy, Lawyer.

University of Regina, School of Human Justice:

Otto Driedger, Professor.

Department of Justice – Government of Saskatchewan:

Betty-Anne Pottruff, Executive Director, Policy Planning and Evaluation.

Saskatchewan Community Resources:

Marilyn Hedlund, Executive Director, Policy Planning and Evaluation.

Saskatchewan Corrections and Public Safety:

Bob Kary, Executive Director, Young Offender Programs.

Saskatchewan Children's Advocate Office:

Marvin Bernstein, Children's Advocate;

Glenda Cooney, Deputy Children's Advocate.

Saskatoon Downtown Youth Centre Inc. (EGADZ):

Bill Thibodeau, Executive Director.

Saskatoon Communities for Children:

Sue Delanoy, Executive Director.

Saskatchewan Foster Family Association:

Deb Davies, Executive Director;

Larry Evans, Family Support Coordinator.

September 18, 2006***As individuals:***

Yude Henteleff, Lawyer;

David Matas, Lawyer.

University of Manitoba, Department of Family Social Sciences:

Joan Durrant, Professor.

RESOLVE – Manitoba:

Jane Ursel, Director.

Province of Manitoba:

Billie Schibler, Children's Advocate.

Child Care Coalition of Manitoba:

Susan Prentice, Advocate.

September 18, 2006

Fact Finding Mission, Manitoba

Long Plain First Nation:

Dennis Meeches, Chief;
Carrie Vandenberghe, Dakota Ojibway Child & Family Services – Child Welfare;
Melanie Prichard, Health;
Liz Prince & Myrna Pratt, Head Start & Daycare;
Marlene Peters & Garnet Meeches, NADAP;
Liz Merrick, Education;
Junita Bunn, Youth;
Grace Daniels, Elder.

June 19, 2006

Assembly of First Nations:

Angus Toulouse, Ontario Regional Chief;
Jonathan Thompson, Director, Social Development, Education and Languages.

June 5, 2006

Indian and Northern Affairs Canada:

Sandra Ginnish, Director General, Treaties, Research, International and Gender Equality Branch;
Havelin Anand, Acting Director General, Social Policy and Programs Branch;
Bruno Steinke, Acting Director, Social Programs and Reform Directorate.

May 29, 2006

First Nations Child and Family Caring Society of Canada:

Cindy Blackstock, Executive Director.

Native Women's Association of Canada:

Jennifer Lamborn, Research and Policy Support.

May 15, 2006

McGill University:

Margaret Somerville, Centre for Medicine, Ethics and Law.

Adoption Council of Canada:

Elsbeth Ross.

Canada Border Services Agency:

Claudette Deschênes, Vice-president, Enforcement Branch.

Citizenship and Immigration – Canada:

Brian Grant, Director General, International and Intergovernmental Relations;
 Micheline Aucoin, Director General, Refugees Branch;
 Mark Davidson, Director of Citizenship (Registrar).

Immigration and Refugee Board:

Paul Aterman, Director General, Operations.

Canadian International Development Agency:

Stephen Wallace, Vice-President, Policy Branch;
 Micheal Montgomery, Senior Child Rights Analyst.

October 10, 2005**Fact Finding Mission to London, Edinburgh and Oslo*****Canadian High Commission, London:***

H.E. Mel Cappe, High Commissioner;
 Chris Berzins, Political Officer.

Youth Justice Board:

Prof. Rod Morgan, Chair;
 Steve Bradford, Policy and communications Manager;
 Jon Hayle, Head of Policy for the Secure Estate and Demand Management
 Representative.

Department for Education and Skills:

Anne Jackson, Director of Strategy, Children, Young People and Families
 Directorate;
 Lucy Andrew, Team Leader, Children, Young People and Families Directorate;
 Denise Walsh, Children, Young People and Families Directorate;
 Prof. Al Aynsley-Green, Children's Commissioner for England.

Save the Children:

Tom Hewitt, Coordinator, Children's Rights Information Network.

October 11, 2005***National Children's Bureau:***

Alison Linsey, Policy and Parliamentary Officer;
 Lisa Payne, Principal Policy Officer;
 Baroness Massey of Darwen, Chair of the All Party Parliamentary Group for
 Children.

House of Commons – London:

Nick Walker, Commons Clerk of the Committee, Parliamentary Joint Committee on Human Rights;
Andrew Dismore, M.P., Chair, Parliamentary Joint Committee on Human Rights;
Lord Lester of Herne Hill, Parliamentary Joint Committee on Human Rights;
Dr. Evan Harris, M.P., Parliamentary Joint Committee on Human Rights;
Mary Creigh, M.P., Parliamentary Joint Committee on Human Rights.

Department for Education and Skills:

Maria Eagle, Parliamentary Under Secretary of State for Children, Young People and Families Directorate;
Ruth Siemaszko, Divisional Manager, Children, Young People and Families Directorate.

Knights Enham School:

Anne Hughes, Headteacher.

Education County Office:

Ian Massey, Hampshire Intercultural Education Inspector.

October 12, 2005

University of Edinburgh:

Kay Tisdall, Senior Lecturer in Social Policy, Childhood Studies Programme.

Scottish Executive:

Paul Smart, Head, Criminal Justice Branch;
Susan Bolt, Head, Child Witnesses Branch;
Brian Peddie, Head, Human Rights & Law Reform, Civil Law Division;
Steven Kerr, US and Canada Policy, International Division.

Scottish Youth Parliament:

Derek Miller, National Coordinator;
Steven Kidd, Communications Officer.

Office of Scottish Commissioner:

Kathleen Marshall, Scottish Commissioner for Children and Young People.

Children in Scotland:

Eddie Follan, Head of Policy Development;
Shelley Gray, Policy Officer.

Scottish Children's Reporter Office:

Malcolm Schaffer, Reporter Manager East.

University of Edinburgh:

Dr. Annis May Timpson, Director, Canadian Studies Centre.

October 14, 2005

Fact Finding Mission to London, Edinburgh and Oslo (continued)

Canadian Embassy – Oslo:

H.E. Jillian Stirk, Ambassador;
Lisa Stadelbauer, Political Counsellor and Consul;
Thomas Bellos, Management Consular Officer.

Royal Ministry of Foreign Affairs:

Tormod Endresen, Director, Global Section;
Peter Wille, Deputy Director General, Global Section.

Office of the Ombudsman:

Reidar Hjermand, Ombudsman for Children;
Knut Haanes, Deputy Director.

Save the Children – Norway:

Elin Saga Kjølholt, Acting Director, Domestic Program.

Childwatch International Research Network:

Jon-Kristian Johnsen, Director.

Norwegian Social Research :

Elisabeth Backe Hansen, PhD, Senior Researcher, Research Director.

University of Oslo:

Lucy Smith, Professor;
Dr. Anton Hoëm, Prof. Emeritus, Prof. Saami University College.

Ministry of Local Government and Regional Development:

Anne Lilvted.

Ministry of Children and Family Affairs:

Haktor Helland, Director General;
Wenche Hellerud, Senior Advisor.

Ministry of Justice:

Hilde Indreberg, Deputy Director General.

September 26, 2005

Social Development Canada:

The Honourable Ken Dryden, P.C., M.P., Minister;
Sonia L'Heureux, Director General, Early Learning and Child Care Direction;
John Connolly, Acting Director, Community Development and Partnership
Directorate;
Deborah Tunis, Director General, Policy and Strategic Direction.

Indian and Northern Affairs Canada:

The Honourable Andy Scott, P.C., M.P., Minister;
Dan Hughes, Senior Advisor, Treaties, Research, International and Gender Equality
Branch;

Havelin Anand, Director General, Social Policy and Programs Branch.

University of Manitoba:

Anne McGillivray, Professor.

University of Alberta:

Joanna Harrington, Professor.

June 16, 2005

Office of the Ombudsman of Nova Scotia:

Christine Brennan, Supervisor of Youth and Senior Services;
Sonia Ferrara, Ombudsman Representative of Youth and Senior Services.

Dalhousie Law School:

Wayne MacKay, Professor.

IWK Health Center:

Douglas McMillan, Professor of Pediatrics;
Jane Mealey, Vice-President, Children's Health;
Anne Cogdon, Director for Primary Health;
Ryan Thompson, MHSA Resident.

Child Care Connections Nova Scotia:

Elaine Ferguson, Executive Director.

Family and Children's Services – Government of Nova Scotia:

George Savoury, Senior Director.

Department of Education – Government of Nova Scotia:

Ann Power, Director, Student Services Division;
Don Glover, Consultant, Student Services Division.

Department of Justice – Government of Nova Scotia:

Fred Honsberger, Executive Director, Correctional Services.

Department of Health – Government of Nova Scotia:

Linda Smith, Executive Director, Mental Health, Child Health and Addiction
Treatment Services.

June 15, 2005

***Department of Health and Social Services, Children's Secretariat
- Government of Prince Edward Island (PEI):***

Cathy McCormack, Early Childhood Education Consultant;
Janice Ployer, Healthy Child Development Coordinator.

Department of Education – Government of PEI:

Carolyn Simpson, Provincial Kindergarten Program Administrator.

The Senate of Canada:

The Honourable Elizabeth Hubley, Senator of Prince Edward Island.

Native Council of P.E.I.:

Jamie Gallant, President and Chief;
Paula Thomas, Chief Finance Officer.

Early Childhood Development Association of P.E.I.:

Brenda Goodine.

Association of Community Living of P.E.I.:

Bridget Carins, Director;
Michele Pineau.

June 14, 2005***Office of the Ombudsman of New Brunswick:***

Bernard Richard, Ombudsman for New Brunswick;
David Kuttner, Law Student;
Cynthia Kirkby, Law Student.

Centre for Research on Youth at Risk:

Susan Reid, Director and Associate Professor, Department of Criminology and
Criminal Justice, St. Thomas University.

Center of Excellence for Youth Engagement:

Florian Bizindavyi, Coordinator;
Roundtable of youth: Ryan Bresson, Erin Bowlen, Katie Cook, Matt Cavanaugh,
Joelle LaFargue, Matt Long, Possesom Paul, Jessica Richards and Emma Stropole.

Partners for Youth:

Leah Levac, Program Manager and Coordinator of the New Brunswick Youth
Action Network.

***Department of Family and Community Services – Government of New Brunswick
(N.B.):***

Bill MacKenzie, Director Policy and Federal/Provincial Relations.

Department of Public Safety – Government of N.B.:

Ian Walsh, Senior Policy Advisor;
Jay Clifford, Manager Policy and Planning.

Department of Education – Government of N.B.:

Inga Boehler, Assistant Director of Policy and Planning.

Department of Justice – Government of N.B.:

Mike Comeau, Director of Policy and Planning.

June 13, 2005***Office of the Child and Youth Advocate:***

Jim Igloliorte, Interim Child and Youth Advocate;
Marilyn McCormack, Deputy Advocate;
Roxanne Pottle, Advocacy Education Officer;
Paule Burt, Advocacy Assessment Officer.

Futures in Newfoundland and Labrador's Youth (FINALY):

Jay McGrath, Chairperson, Provincial Youth;
Chelsea Howard, Provincial Youth Council.

Charles J. Andrew Youth Treatment Centre:

Kristin Sellon, Executive Director.

Department of Health and Community Services – Government of Newfoundland and Labrador (Nfld & Lab):

Lynn Vivian-Book, Assistant Deputy Minister.

Department of Justice – Government of Nfld and Lab.:

Mary Mandville, Civil Solicitor.

Child, Youth and Family Services – Government of Nfld and Lab.:

Ivy Burt, Provincial Director.

Center for Excellence for Youth Engagement:

Florian Bizindavyi, Coordinator;
Roundtable of youth: Megan Fitzgerald, Ryan Stratton, Rachel Gardiner and Shireen Marzouk.

June 6, 2005

Health Canada:

The Honourable Ujjal Dosanjh, P.C., M.P., Minister;
Claude Rocan, Director General, Centre for Healthy Human Development,
Population and Public Health Branch;
Kelly Stone, Director, Division of Childhood and Adolescence;
Dawn Walker, Special Advisor, Strategic, Planning and Analysis, First Nations and
Inuit Health Branch.

Citizenship and Immigration – Canada:

The Honourable Joe Volpe, P.C., M.P., Minister;
Daniel Jean, Assistant Deputy Minister, Policy and Program Development;
Brian Grant, Director General, Strategic Policy and Partnerships.

May 30, 2005

Government of New Zealand (by videoconference):

Cindy Kiro, Children's Commissioner of New Zealand.

May 16, 2005

Health Canada:

The Honourable Carolyn Bennett, P.C., M.P., Minister of State (Public Health);
Kelly Stone, Director, Division of Childhood and Adolescence;
Sylvie Stachenko, Deputy Chief Public Health Officer.

Canadian International Development Agency (CIDA):

David Moloney, Vice-President, Policy Branch;

Sarita Bhatla, Director, Human Rights and Participation Division;
Natalie Zend, Senior Child Rights Analyst, Policy Branch.

May 9, 2005

As individuals:

Christine Colin, Medical Doctor specializing in Public Health;
Lorraine Fillion, Social Worker and Family Mediator;
Hugues Létourneau, Lawyer.

May 2, 2005

United Nations High Commission to Refugees:

Jahanshah Assadi, Representative in Canada;
Rana Khan, Legal Officer.

April 18, 2005

Department of Canadian Heritage:

Eileen Sarkar, Assistant Deputy Minister;
Kristina Namiesniowski, Director General, Multiculturalism and Human Rights
Branch;
Calie McPhee, Manager, Human Rights Program.

Justice for Children and Youth:

Sheryl Milne, Staff Counsel;
Martha Mackinnon, Executive Director.

April 11, 2005

Department of Justice:

The Honourable Irwin Cotler, P.C., M.P., Minister;
Lise Lafrenière-Henrie, Senior Counsel and Coordinator for Family Law Policy;
Elaine Ménard, Counsel, Human Rights Law Section;
Carole Morency, Senior Counsel, Criminal Law Policy Section.

March 21, 2005

Irish Centre for Human Rights, National University of Ireland – Galway:

William A. Schabas, Director.

As an individual:

Max Yalden.

March 7, 2005

International Social Service Canada:

Agnes Casselman, Executive Director.

February 21, 2005

As an individual:

Peter Leuprecht.

International Institute for Child Rights and Development:

Suzanne Williams, Managing Director.

International Bureau for Children's Rights:

Jean-François Noël, Director General.

Canadian Council of Provincial Child and Youth Advocates:

Judy Finlay, Chief Advocate and Manager, Office of Child and Family Service
Advocacy, Toronto;

Deborah Parker-Loewen, President of the Council and Children's Advocate,
Children's Advocate Office, Saskatoon;

Janet Mirwaldt, Children's Advocate, Office of the Children's Advocate, Manitoba.

February 14, 2005

Child Welfare League of Canada:

Peter M. Dudding, Executive Director.

CAMH Centre for Prevention Science:

Claire Crooks, Associate Director.

UNICEF – Canada :

David Agnew, President and CEO.

World Vision – Canada:

Kathy Vandergrift, Chair, Working Group on Children and Armed Conflict;

Sara Austin, Policy Analyst, Child Rights and HIV/AIDS.

February 7, 2005

University College of Cape Breton, Children's Right Center:

Katherine Covell, Professor.

First Nations Child and Family Caring Society of Canada:

Cindy Blackstock, Executive Director.

Save the Children – Canada:

Rita Karakas, Executive Director.

January 27, 2005

Fact Finding Mission to Geneva and Stockholm

Canadian Permanent Mission to the United Nations:

Ian Ferguson, Acting Alternate Permanent Representative;

Deirdre Kent, Counsellor.

Inter-Parliamentary Union:

Kareen Jabre, Children's Rights Officer.

Office of the High Commissioner for Human Rights:

Mahr Kahn-Williams, Deputy High Commissioner for Human Rights.

International Labour Organization:

Jane Stewart, Acting Executive Director for the Employment Sector;
Frans Roselaars, Director, In Focus Programme on Child Labour.

January 28, 2005

Fact Finding Mission to Geneva and Stockholm (continued)***Office of the UN High Commissioner for Refugees:***

Terry Morel, Senior Advisor on Refugee Children;
Ron Pouwels, Chief of Women, Children and Community Development Section.

UNICEF:

Amaya Gillespie, Director, UN Study on Violence against Children;
Ya Njameh Jeng, Special Initiative Intern.

Members of the UN Committee on the Rights of the Child:

Japp Doek, Chair;
Marilia Sardenbergh;
Nevena Sahovic-Vukovic;
Norberto Liwiski;
Yanghee Lee;
Ibrahim Al-Sheedi;
Joyce Aluoch;
Moushira Katthab;
Paulo David.

NGO Group for the Convention on the Rights of the Child:

Elaine Petitat-Côté;
Hélène Sakstein.

January 31, 2005

Canadian Embassy – Stockholm:

H.E. Lorenz Friedlaender, Ambassador;
Kenneth Macartney – Counsellor;
Dr. Aili Käärik, Political Affairs and Public Diplomacy Officer.

Ministry of Health and Social Affairs – Sweden:

Carin Jahn, Director, Special Expert, Child Policy;
Carl Älfvåg, Director;
Anna Holmqvist, Desk Officer.

Ministry for Foreign Affairs:

Cecilia Ekholm.

Network of Parliamentarians dealing with Children's rights:

Inger Davidson, M.P.;
Hillevi Engström, M.P.;
Gunilla Wahlén, M.P.;
Rigmor Stenmark, M.P.;
Jan Lindholm, M.P.

Olof Palme International Center:

Thomas Hammarberg, Secretary General.

Children's Ombudsman Office:

Lena Nyberg, Children's Ombudsman for Sweden.

December 13, 2004

As individuals:

Nicholas Bala;
Jeffery Wilson;
Maryellen Symons.

Canadian Coalition for the Rights of Children:

Tara Ashtakala, Acting Coordinator.

National Children's Alliance:

Dianne Bascombe, Executive Director.

Child Welfare League of Canada:

Peter M. Dudding, Executive Director.

Appendix B: Convention on the Rights of the Child

Adopted and opened for signature, ratification and accession by General Assembly resolution 44/25 of 20 November 1989

entry into force 2 September 1990, in accordance with article 49

Preamble

The States Parties to the present Convention,

Considering that, in accordance with the principles proclaimed in the Charter of the United Nations, recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world,

Bearing in mind that the peoples of the United Nations have, in the Charter, reaffirmed their faith in fundamental human rights and in the dignity and worth of the human person, and have determined to promote social progress and better standards of life in larger freedom,

Recognizing that the United Nations has, in the Universal Declaration of Human Rights and in the International Covenants on Human Rights, proclaimed and agreed that everyone is entitled to all the rights and freedoms set forth therein, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status,

Recalling that, in the Universal Declaration of Human Rights, the United Nations has proclaimed that childhood is entitled to special care and assistance,

Convinced that the family, as the fundamental group of society and the natural environment for the growth and well-being of all its members and particularly children, should be afforded the necessary protection and assistance so that it can fully assume its responsibilities within the community,

Recognizing that the child, for the full and harmonious development of his or her personality, should grow up in a family environment, in an atmosphere of happiness, love and understanding,

Considering that the child should be fully prepared to live an individual life in society, and brought up in the spirit of the ideals proclaimed in the Charter of the United Nations, and in particular in the spirit of peace, dignity, tolerance, freedom, equality and solidarity,

Bearing in mind that the need to extend particular care to the child has been stated in the Geneva Declaration of the Rights of the Child of 1924 and in the Declaration of the Rights of the Child adopted by the General Assembly on 20 November 1959 and recognized in the Universal Declaration of Human Rights, in the International Covenant on Civil and Political Rights (in particular in articles 23 and 24), in the International Covenant on Economic, Social and Cultural Rights (in particular in article 10) and in the statutes and relevant instruments of specialized agencies and international organizations concerned with the welfare of children,

Bearing in mind that, as indicated in the Declaration of the Rights of the Child, "the child, by reason of his physical and mental immaturity, needs special safeguards and care, including appropriate legal protection, before as well as after birth",

Recalling the provisions of the Declaration on Social and Legal Principles relating to the Protection and Welfare of Children, with Special Reference to Foster Placement and Adoption

APPENDIX B: CONVENTION ON THE RIGHTS OF THE CHILD

Nationally and Internationally; the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules) ; and the Declaration on the Protection of Women and Children in Emergency and Armed Conflict, Recognizing that, in all countries in the world, there are children living in exceptionally difficult conditions, and that such children need special consideration, Taking due account of the importance of the traditions and cultural values of each people for the protection and harmonious development of the child, Recognizing the importance of international cooperation for improving the living conditions of children in every country, in particular in the developing countries,

Have agreed as follows:

PART I**Article 1**

For the purposes of the present Convention, a child means every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier.

Article 2

1. States Parties shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child's or his or her parent's or legal guardian's race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status.
2. States Parties shall take all appropriate measures to ensure that the child is protected against all forms of discrimination or punishment on the basis of the status, activities, expressed opinions, or beliefs of the child's parents, legal guardians, or family members.

Article 3

1. In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.
2. States Parties undertake to ensure the child such protection and care as is necessary for his or her well-being, taking into account the rights and duties of his or her parents, legal guardians, or other individuals legally responsible for him or her, and, to this end, shall take all appropriate legislative and administrative measures.
3. States Parties shall ensure that the institutions, services and facilities responsible for the care or protection of children shall conform with the standards established by competent authorities, particularly in the areas of safety, health, in the number and suitability of their staff, as well as competent supervision.

Article 4

States Parties shall undertake all appropriate legislative, administrative, and other measures for the implementation of the rights recognized in the present Convention. With regard to economic, social and cultural rights, States Parties shall undertake such measures to the maximum extent of their available resources and, where needed, within the framework of international co-operation.

Article 5

APPENDIX B: CONVENTION ON THE RIGHTS OF THE CHILD

States Parties shall respect the responsibilities, rights and duties of parents or, where applicable, the members of the extended family or community as provided for by local custom, legal guardians or other persons legally responsible for the child, to provide, in a manner consistent with the evolving capacities of the child, appropriate direction and guidance in the exercise by the child of the rights recognized in the present Convention.

Article 6

1. States Parties recognize that every child has the inherent right to life. 2. States Parties shall ensure to the maximum extent possible the survival and development of the child.

Article 7

1. The child shall be registered immediately after birth and shall have the right from birth to a name, the right to acquire a nationality and, as far as possible, the right to know and be cared for by his or her parents.
2. States Parties shall ensure the implementation of these rights in accordance with their national law and their obligations under the relevant international instruments in this field, in particular where the child would otherwise be stateless.

Article 8

1. States Parties undertake to respect the right of the child to preserve his or her identity, including nationality, name and family relations as recognized by law without unlawful interference.
2. Where a child is illegally deprived of some or all of the elements of his or her identity, States Parties shall provide appropriate assistance and protection, with a view to re-establishing speedily his or her identity.

Article 9

1. States Parties shall ensure that a child shall not be separated from his or her parents against their will, except when competent authorities subject to judicial review determine, in accordance with applicable law and procedures, that such separation is necessary for the best interests of the child. Such determination may be necessary in a particular case such as one involving abuse or neglect of the child by the parents, or one where the parents are living separately and a decision must be made as to the child's place of residence.
2. In any proceedings pursuant to paragraph 1 of the present article, all interested parties shall be given an opportunity to participate in the proceedings and make their views known.
3. States Parties shall respect the right of the child who is separated from one or both parents to maintain personal relations and direct contact with both parents on a regular basis, except if it is contrary to the child's best interests.
4. Where such separation results from any action initiated by a State Party, such as the detention, imprisonment, exile, deportation or death (including death arising from any cause while the person is in the custody of the State) of one or both parents or of the child, that State Party shall, upon request, provide the parents, the child or, if appropriate, another member of the family with the essential information concerning the whereabouts of the absent member(s) of the family unless the provision of the information would be detrimental to the well-being of the child. States Parties shall further ensure that the submission of such a request shall of itself entail no adverse consequences for the person(s) concerned.

Article 10

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

Article 11

1. States Parties shall take measures to combat the illicit transfer and non-return of children abroad.
2. To this end, States Parties shall promote the conclusion of bilateral or multilateral agreements or accession to existing agreements.

Article 12

1. States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child.
2. For this purpose, the child shall in particular be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly, or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law.

Article 13

1. The child shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of the child's choice.
2. The exercise of this right may be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:
 - (a) For respect of the rights or reputations of others; or
 - (b) For the protection of national security or of public order (*ordre public*), or of public health or morals.

Article 14

1. States Parties shall respect the right of the child to freedom of thought, conscience and religion.
2. States Parties shall respect the rights and duties of the parents and, when applicable, legal guardians, to provide direction to the child in the exercise of his or her right in a manner consistent with the evolving capacities of the child.
3. Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health or morals, or the fundamental rights and freedoms of others.

APPENDIX B: CONVENTION ON THE RIGHTS OF THE CHILD

Article 15

1. States Parties recognize the rights of the child to freedom of association and to freedom of peaceful assembly.
2. No restrictions may be placed on the exercise of these rights other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others.

Article 16

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

Article 17

States Parties recognize the important function performed by the mass media and shall ensure that the child has access to information and material from a diversity of national and international sources, especially those aimed at the promotion of his or her social, spiritual and moral well-being and physical and mental health.

To this end, States Parties shall:

- (a) Encourage the mass media to disseminate information and material of social and cultural benefit to the child and in accordance with the spirit of article 29;
- (b) Encourage international co-operation in the production, exchange and dissemination of such information and material from a diversity of cultural, national and international sources;
- (c) Encourage the production and dissemination of children's books;
- (d) Encourage the mass media to have particular regard to the linguistic needs of the child who belongs to a minority group or who is indigenous;
- (e) Encourage the development of appropriate guidelines for the protection of the child from information and material injurious to his or her well-being, bearing in mind the provisions of articles 13 and 18.

Article 18

1. States Parties shall use their best efforts to ensure recognition of the principle that both parents have common responsibilities for the upbringing and development of the child. Parents or, as the case may be, legal guardians, have the primary responsibility for the upbringing and development of the child. The best interests of the child will be their basic concern.
2. For the purpose of guaranteeing and promoting the rights set forth in the present Convention, States Parties shall render appropriate assistance to parents and legal guardians in the performance of their child-rearing responsibilities and shall ensure the development of institutions, facilities and services for the care of children.
3. States Parties shall take all appropriate measures to ensure that children of working parents have the right to benefit from child-care services and facilities for which they are eligible.

Article 19

1. States Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual

APPENDIX B: CONVENTION ON THE RIGHTS OF THE CHILD

abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child.

2. Such protective measures should, as appropriate, include effective procedures for the establishment of social programmes to provide necessary support for the child and for those who have the care of the child, as well as for other forms of prevention and for identification, reporting, referral, investigation, treatment and follow-up of instances of child maltreatment described heretofore, and, as appropriate, for judicial involvement.

Article 20

1. A child temporarily or permanently deprived of his or her family environment, or in whose own best interests cannot be allowed to remain in that environment, shall be entitled to special protection and assistance provided by the State.

2. States Parties shall in accordance with their national laws ensure alternative care for such a child.

3. Such care could include, inter alia, foster placement, kafalah of Islamic law, adoption or if necessary placement in suitable institutions for the care of children. When considering solutions, due regard shall be paid to the desirability of continuity in a child's upbringing and to the child's ethnic, religious, cultural and linguistic background.

Article 21

States Parties that recognize and/or permit the system of adoption shall ensure that the best interests of the child shall be the paramount consideration and they shall:

(a) Ensure that the adoption of a child is authorized only by competent authorities who determine, in accordance with applicable law and procedures and on the basis of all pertinent and reliable information, that the adoption is permissible in view of the child's status concerning parents, relatives and legal guardians and that, if required, the persons concerned have given their informed consent to the adoption on the basis of such counselling as may be necessary;

(b) Recognize that inter-country adoption may be considered as an alternative means of child's care, if the child cannot be placed in a foster or an adoptive family or cannot in any suitable manner be cared for in the child's country of origin;

(c) Ensure that the child concerned by inter-country adoption enjoys safeguards and standards equivalent to those existing in the case of national adoption;

(d) Take all appropriate measures to ensure that, in inter-country adoption, the placement does not result in improper financial gain for those involved in it;

(e) Promote, where appropriate, the objectives of the present article by concluding bilateral or multilateral arrangements or agreements, and endeavour, within this framework, to ensure that the placement of the child in another country is carried out by competent authorities or organs.

Article 22

1. States Parties shall take appropriate measures to ensure that a child who is seeking refugee status or who is considered a refugee in accordance with applicable international or domestic law and procedures shall, whether unaccompanied or accompanied by his or her parents or by any other person, receive appropriate protection and humanitarian assistance in the enjoyment of applicable rights set forth in the present Convention and in other international human rights or humanitarian instruments to which the said States are Parties.

2. For this purpose, States Parties shall provide, as they consider appropriate, co-operation in any efforts by the United Nations and other competent intergovernmental organizations or nongovernmental organizations co-operating with the United Nations to protect and assist such a child and to trace the parents or other members of the family of any refugee child in order to obtain information necessary for reunification with his or her family. In cases where no parents or other members of the family can be found, 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.

Article 23

1. States Parties recognize that a mentally or physically disabled child should enjoy a full and decent life, in conditions which ensure dignity, promote self-reliance and facilitate the child's active participation in the community.
2. States Parties recognize the right of the disabled child to special care and shall encourage and ensure the extension, subject to available resources, to the eligible child and those responsible for his or her care, of assistance for which application is made and which is appropriate to the child's condition and to the circumstances of the parents or others caring for the child.
3. Recognizing the special needs of a disabled child, assistance extended in accordance with paragraph 2 of the present article shall be provided free of charge, whenever possible, taking into account the financial resources of the parents or others caring for the child, and shall be designed to ensure that the disabled child has effective access to and receives education, training, health care services, rehabilitation services, preparation for employment and recreation opportunities in a manner conducive to the child's achieving the fullest possible social integration and individual development, including his or her cultural and spiritual development
4. States Parties shall promote, in the spirit of international cooperation, the exchange of appropriate information in the field of preventive health care and of medical, psychological and functional treatment of disabled children, including dissemination of and access to information concerning methods of rehabilitation, education and vocational services, with the aim of enabling States Parties to improve their capabilities and skills and to widen their experience in these areas. In this regard, particular account shall be taken of the needs of developing countries.

Article 24

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

Article 25

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States Parties recognize the right of a child who has been placed by the competent authorities for the purposes of care, protection or treatment of his or her physical or mental health, to a periodic review of the treatment provided to the child and all other circumstances relevant to his or her placement.

Article 26

1. States Parties shall recognize for every child the right to benefit from social security, including social insurance, and shall take the necessary measures to achieve the full realization of this right in accordance with their national law.
2. The benefits should, where appropriate, be granted, taking into account the resources and the circumstances of the child and persons having responsibility for the maintenance of the child, as well as any other consideration relevant to an application for benefits made by or on behalf of the child.

Article 27

1. States Parties recognize the right of every child to a standard of living adequate for the child's physical, mental, spiritual, moral and social development.
2. The parent(s) or others responsible for the child have the primary responsibility to secure, within their abilities and financial capacities, the conditions of living necessary for the child's development.
3. States Parties, in accordance with national conditions and within their means, shall take appropriate measures to assist parents and others responsible for the child to implement this right and shall in case of need provide material assistance and support programmes, particularly with regard to nutrition, clothing and housing.
4. States Parties shall take all appropriate measures to secure the recovery of maintenance for the child from the parents or other persons having financial responsibility for the child, both within the State Party and from abroad. In particular, where the person having financial responsibility for the child lives in a State different from that of the child, States Parties shall promote the accession to international agreements or the conclusion of such agreements, as well as the making of other appropriate arrangements.

Article 28

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

of developing countries.

Article 29

1. States Parties agree that the education of the child shall be directed to:
 - (a) The development of the child's personality, talents and mental and physical abilities to their fullest potential;
 - (b) The development of respect for human rights and fundamental freedoms, and for the principles enshrined in the Charter of the United Nations;
 - (c) The development of respect for the child's parents, his or her own cultural identity, language and values, for the national values of the country in which the child is living, the country from which he or she may originate, and for civilizations different from his or her own;
 - (d) The preparation of the child for responsible life in a free society, in the spirit of understanding, peace, tolerance, equality of sexes, and friendship among all peoples, ethnic, national and religious groups and persons of indigenous origin;
 - (e) The development of respect for the natural environment.

2. No part of the present article or article 28 shall be construed so as to interfere with the liberty of individuals and bodies to establish and direct educational institutions, subject always to the observance of the principle set forth in paragraph 1 of the present article and to the requirements that the education given in such institutions shall conform to such minimum standards as may be laid down by the State.

Article 30

In those States in which ethnic, religious or linguistic minorities or persons of indigenous origin exist, a child belonging to such a minority or who is indigenous shall not be denied the right, in community with other members of his or her group, to enjoy his or her own culture, to profess and practise his or her own religion, or to use his or her own language.

Article 31

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

Article 32

1. States Parties recognize the right of the child to be protected from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral or social development.
2. States Parties shall take legislative, administrative, social and educational measures to ensure the implementation of the present article. To this end, and having regard to the relevant provisions of other international instruments, States Parties shall in particular:
 - (a) Provide for a minimum age or minimum ages for admission to employment;
 - (b) Provide for appropriate regulation of the hours and conditions of employment;
 - (c) Provide for appropriate penalties or other sanctions to ensure the effective enforcement of the present article.

Article 33

States Parties shall take all appropriate measures, including legislative, administrative, social and educational measures, to protect children from the illicit use of narcotic drugs and psychotropic substances as defined in the relevant international treaties, and to prevent the use of children in the illicit production and trafficking of such substances.

Article 34

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

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

Article 35

States Parties shall take all appropriate national, bilateral and multilateral measures to prevent the abduction of, the sale of or traffic in children for any purpose or in any form.

Article 36

States Parties shall protect the child against all other forms of exploitation prejudicial to any aspects of the child's welfare.

Article 37

States Parties shall ensure that:

- (a) No child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment. Neither capital punishment nor life imprisonment without possibility of release shall be imposed for offences committed by persons below eighteen years of age;
- (b) No child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time;
- (c) Every child deprived of liberty shall be treated with humanity and respect for the inherent dignity of the human person, and in a manner which takes into account the needs of persons of his or her age. In particular, every child deprived of liberty shall be separated from adults unless it is considered in the child's best interest not to do so and shall have the right to maintain contact with his or her family through correspondence and visits, save in exceptional circumstances;
- (d) Every child deprived of his or her liberty shall have the right to prompt access to legal and other appropriate assistance, as well as the right to challenge the legality of the deprivation of his or her liberty before a court or other competent, independent and impartial authority, and to a prompt decision on any such action.

Article 38

1. States Parties undertake to respect and to ensure respect for rules of international humanitarian law applicable to them in armed conflicts which are relevant to the child.
2. States Parties shall take all feasible measures to ensure that persons who have not attained the age of fifteen years do not take a direct part in hostilities.

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3. States Parties shall refrain from recruiting any person who has not attained the age of fifteen years into their armed forces. In recruiting among those persons who have attained the age of fifteen years but who have not attained the age of eighteen years, States Parties shall endeavour to give priority to those who are oldest.

4. In accordance with their obligations under international humanitarian law to protect the civilian population in armed conflicts, States Parties shall take all feasible measures to ensure protection and care of children who are affected by an armed conflict.

Article 39

States Parties shall take all appropriate measures to promote 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. Such recovery and reintegration shall take place in an environment which fosters the health, self-respect and dignity of the child.

Article 40

1. States Parties recognize the right of every child alleged as, accused of, or recognized as having infringed the penal law to be treated in a manner consistent with the promotion of the child's sense of dignity and worth, which reinforces the child's respect for the human rights and fundamental freedoms of others and which takes into account the child's age and the desirability of promoting the child's reintegration and the child's assuming a constructive role in society.

2. To this end, and having regard to the relevant provisions of international instruments, States Parties shall, in particular, ensure that:

(a) No child shall be alleged as, be accused of, or recognized as having infringed the penal law by reason of acts or omissions that were not prohibited by national or international law at the time they were committed;

(b) Every child alleged as or accused of having infringed the penal law has at least the following guarantees:

(i) To be presumed innocent until proven guilty according to law;

(ii) To be informed promptly and directly of the charges against him or her, and, if appropriate, through his or her parents or legal guardians, and to have legal or other appropriate assistance in the preparation and presentation of his or her defence;

(iii) To have the matter determined without delay by a competent, independent and impartial authority or judicial body in a fair hearing according to law, in the presence of legal or other appropriate assistance and, unless it is considered not to be in the best interest of the child, in particular, taking into account his or her age or situation, his or her parents or legal guardians;

(iv) Not to be compelled to give testimony or to confess guilt; to examine or have examined adverse witnesses and to obtain the participation and examination of witnesses on his or her behalf under conditions of equality;

(v) If considered to have infringed the penal law, to have this decision and any measures imposed in consequence thereof reviewed by a higher competent, independent and impartial authority or judicial body according to law;

(vi) To have the free assistance of an interpreter if the child cannot understand or speak the language used;

(vii) To have his or her privacy fully respected at all stages of the proceedings.

3. States Parties shall seek to promote the establishment of laws, procedures, authorities and institutions specifically applicable to children alleged as, accused of, or recognized as having infringed the penal law, and, in particular:

(a) The establishment of a minimum age below which children shall be presumed not to have the capacity to infringe the penal law;

(b) Whenever appropriate and desirable, measures for dealing with such children without resorting to judicial proceedings, providing that human rights and legal safeguards are

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fully respected. 4. A variety of dispositions, such as care, guidance and supervision orders; counselling; probation; foster care; education and vocational training programmes and other alternatives to institutional care shall be available to ensure that children are dealt with in a manner appropriate to their well-being and proportionate both to their circumstances and the offence.

Article 41

Nothing in the present Convention shall affect any provisions which are more conducive to the realization of the rights of the child and which may be contained in:

- (a) The law of a State party; or
- (b) International law in force for that State.

PART II**Article 42**

States Parties undertake to make the principles and provisions of the Convention widely known, by appropriate and active means, to adults and children alike.

Article 43

1. For the purpose of examining the progress made by States Parties in achieving the realization of the obligations undertaken in the present Convention, there shall be established a Committee on the Rights of the Child, which shall carry out the functions hereinafter provided.
2. The Committee shall consist of ten experts of high moral standing and recognized competence in the field covered by this Convention. The members of the Committee shall be elected by States Parties from among their nationals and shall serve in their personal capacity, consideration being given to equitable geographical distribution, as well as to the principal legal systems.
3. The members of the Committee shall be elected by secret ballot from a list of persons nominated by States Parties. Each State Party may nominate one person from among its own nationals.
4. The initial election to the Committee shall be held no later than six months after the date of the entry into force of the present Convention and thereafter every second year. At least four months before the date of each election, the Secretary-General of the United Nations shall address a letter to States Parties inviting them to submit their nominations within two months. The Secretary-General shall subsequently prepare a list in alphabetical order of all persons thus nominated, indicating States Parties which have nominated them, and shall submit it to the States Parties to the present Convention.
5. The elections shall be held at meetings of States Parties convened by the Secretary-General at United Nations Headquarters. At those meetings, for which two thirds of States Parties shall constitute a quorum, the persons elected to the Committee shall be those who obtain the largest number of votes and an absolute majority of the votes of the representatives of States Parties present and voting.
6. The members of the Committee shall be elected for a term of four years. They shall be eligible for re-election if renominated. The term of five of the members elected at the first election shall expire at the end of two years; immediately after the first election, the names of these five members shall be chosen by lot by the Chairman of the meeting.
7. If a member of the Committee dies or resigns or declares that for any other cause he or she can no longer perform the duties of the Committee, the State Party which nominated the member shall appoint another expert from among its nationals to serve for the remainder of the term, subject to the approval of the Committee.
8. The Committee shall establish its own rules of procedure.

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9. The Committee shall elect its officers for a period of two years.
10. The meetings of the Committee shall normally be held at United Nations Headquarters or at any other convenient place as determined by the Committee. The Committee shall normally meet annually. The duration of the meetings of the Committee shall be determined, and reviewed, if necessary, by a meeting of the States Parties to the present Convention, subject to the approval of the General Assembly.
11. The Secretary-General of the United Nations shall provide the necessary staff and facilities for the effective performance of the functions of the Committee under the present Convention.
12. With the approval of the General Assembly, the members of the Committee established under the present Convention shall receive emoluments from United Nations resources on such terms and conditions as the Assembly may decide.

Article 44

1. States Parties undertake to submit to the Committee, through the Secretary-General of the United Nations, reports on the measures they have adopted which give effect to the rights recognized herein and on the progress made on the enjoyment of those rights
 - (a) Within two years of the entry into force of the Convention for the State Party concerned;
 - (b) Thereafter every five years.
2. Reports made under the present article shall indicate factors and difficulties, if any, affecting the degree of fulfilment of the obligations under the present Convention. Reports shall also contain sufficient information to provide the Committee with a comprehensive understanding of the implementation of the Convention in the country concerned.
3. A State Party which has submitted a comprehensive initial report to the Committee need not, in its subsequent reports submitted in accordance with paragraph 1 (b) of the present article, repeat basic information previously provided.
4. The Committee may request from States Parties further information relevant to the implementation of the Convention.
5. The Committee shall submit to the General Assembly, through the Economic and Social Council, every two years, reports on its activities.
6. States Parties shall make their reports widely available to the public in their own countries.

Article 45

In order to foster the effective implementation of the Convention and to encourage international cooperation in the field covered by the Convention:

- (a) The specialized agencies, the United Nations Children's Fund, and other United Nations organs shall be entitled to be represented at the consideration of the implementation of such provisions of the present Convention as fall within the scope of their mandate. The Committee may invite the specialized agencies, the United Nations Children's Fund and other competent bodies as it may consider appropriate to provide expert advice on the implementation of the Convention in areas falling within the scope of their respective mandates. The Committee may invite the specialized agencies, the United Nations Children's Fund, and other United Nations organs to submit reports on the implementation of the Convention in areas falling within the scope of their activities;
- (b) The Committee shall transmit, as it may consider appropriate, to the specialized agencies, the United Nations Children's Fund and other competent bodies, any reports from States Parties that contain a request, or indicate a need, for technical advice or assistance, along with the Committee's observations and suggestions, if any, on these requests or indications;
- (c) The Committee may recommend to the General Assembly to request the Secretary-General to undertake on its behalf studies on specific issues relating to the rights of the child;
- (d) The Committee may make suggestions and general recommendations based on

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information received pursuant to articles 44 and 45 of the present Convention. Such suggestions and general recommendations shall be transmitted to any State Party concerned and reported to the General Assembly, together with comments, if any, from States Parties.

PART III**Article 46**

The present Convention shall be open for signature by all States.

Article 47

The present Convention is subject to ratification. Instruments of ratification shall be deposited with the Secretary-General of the United Nations.

Article 48

The present Convention shall remain open for accession by any State. The instruments of accession shall be deposited with the Secretary-General of the United Nations.

Article 49

1. The present Convention shall enter into force on the thirtieth day following the date of deposit with the Secretary-General of the United Nations of the twentieth instrument of ratification or accession.
2. For each State ratifying or acceding to the Convention after the deposit of the twentieth instrument of ratification or accession, the Convention shall enter into force on the thirtieth day after the deposit by such State of its instrument of ratification or accession.

Article 50

1. Any State Party may propose an amendment and file it with the Secretary-General of the United Nations. The Secretary-General shall thereupon communicate the proposed amendment to States Parties, with a request that they indicate whether they favour a conference of States Parties for the purpose of considering and voting upon the proposals. In the event that, within four months from the date of such communication, at least one third of the States Parties favour such a conference, the Secretary-General shall convene the conference under the auspices of the United Nations. Any amendment adopted by a majority of States Parties present and voting at the conference shall be submitted to the General Assembly for approval.
2. An amendment adopted in accordance with paragraph 1 of the present article shall enter into force when it has been approved by the General Assembly of the United Nations and accepted by a two-thirds majority of States Parties.
3. When an amendment enters into force, it shall be binding on those States Parties which have accepted it, other States Parties still being bound by the provisions of the present Convention and any earlier amendments which they have accepted.

Article 51

1. The Secretary-General of the United Nations shall receive and circulate to all States the text of reservations made by States at the time of ratification or accession.
2. A reservation incompatible with the object and purpose of the present Convention

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shall not be permitted.

3. Reservations may be withdrawn at any time by notification to that effect addressed to the Secretary-General of the United Nations, who shall then inform all States. Such notification shall take effect on the date on which it is received by the Secretary-General

Article 52

A State Party may denounce the present Convention by written notification to the Secretary-General of the United Nations. Denunciation becomes effective one year after the date of receipt of the notification by the Secretary-General.

Article 53

The Secretary-General of the United Nations is designated as the depositary of the present Convention.

Article 54

The original of the present Convention, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations. IN WITNESS THEREOF the undersigned plenipotentiaries, being duly authorized thereto by their respective governments, have signed the present Convention.

Appendix C: Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography

Adopted and opened for signature, ratification and accession by General Assembly resolution A/RES/54/263 of 25 May 2000

entered into force on 18 January 2002

The States Parties to the present Protocol,

Considering that, in order further to achieve the purposes of the Convention on the Rights of the Child and the implementation of its provisions, especially articles 1, 11, 21, 32, 33, 34, 35 and 36, it would be appropriate to extend the measures that States Parties should undertake in order to guarantee the protection of the child from the sale of children, child prostitution and child pornography,

Considering also that the Convention on the Rights of the Child recognizes the right of the child to be protected from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral or social development,

Gravely concerned at the significant and increasing international traffic in children for the purpose of the sale of children, child prostitution and child pornography,

Deeply concerned at the widespread and continuing practice of sex tourism, to which children are especially vulnerable, as it directly promotes the sale of children, child prostitution and child pornography,

Recognizing that a number of particularly vulnerable groups, including girl children, are at greater risk of sexual exploitation and that girl children are disproportionately represented among the sexually exploited,

Concerned about the growing availability of child pornography on the Internet and other evolving technologies, and recalling the International Conference on Combating Child Pornography on the Internet, held in Vienna in 1999, in particular its conclusion calling for the worldwide criminalization of the production, distribution, exportation, transmission, importation, intentional possession and advertising of child pornography, and stressing the importance of closer cooperation and partnership between Governments and the Internet industry,

Believing that the elimination of the sale of children, child prostitution and child pornography will be facilitated by adopting a holistic approach, addressing the contributing factors, including underdevelopment, poverty, economic disparities, inequitable socio-economic structure, dysfunctioning families, lack of education, urban-rural migration, gender discrimination, irresponsible adult sexual behaviour, harmful traditional practices, armed conflicts and trafficking in children,

Believing also that efforts to raise public awareness are needed to reduce consumer demand for the sale of children, child prostitution and child pornography, and believing further in the importance of strengthening global partnership among all actors and of improving law enforcement at the national level,

Noting the provisions of international legal instruments relevant to the protection of children, including the Hague Convention on Protection of Children and Cooperation in Respect of Intercountry Adoption, the Hague Convention on the Civil Aspects of International Child Abduction, the Hague Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Cooperation in Respect of Parental Responsibility and Measures for the Protection of Children, and International Labour Organization Convention No. 182 on the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour, Encouraged by the overwhelming support for the Convention on the Rights of the Child, demonstrating the widespread commitment that exists for the promotion and protection of the rights of the child,

Recognizing the importance of the implementation of the provisions of the Programme of Action for the Prevention of the Sale of Children, Child Prostitution and Child Pornography and the Declaration and Agenda for Action adopted at the World Congress against Commercial Sexual Exploitation of Children, held in Stockholm from 27 to 31 August 1996, and the other relevant decisions and recommendations of pertinent international bodies,

Taking due account of the importance of the traditions and cultural values of each people for the protection and harmonious development of the child, Have agreed as follows:

Article 1

States Parties shall prohibit the sale of children, child prostitution and child pornography as provided for by the present Protocol.

Article 2

For the purposes of the present Protocol:

(a) Sale of children means any act or transaction whereby a child is transferred by any person or group of persons to another for remuneration or any other consideration;

(b) Child prostitution means the use of a child in sexual activities for remuneration or any other form of consideration;

(c) Child pornography means any representation, by whatever means, of a child engaged in real or simulated explicit sexual activities or any representation of the sexual parts of a child for primarily sexual purposes.

Article 3

1. Each State Party shall ensure that, as a minimum, the following acts and activities are fully covered under its criminal or penal law, whether such offences are committed domestically or transnationally or on an individual or organized basis:

(a) In the context of sale of children as defined in article 2:

(i) Offering, delivering or accepting, by whatever means, a child for the purpose of:

- a. Sexual exploitation of the child;
 - b. Transfer of organs of the child for profit;
 - c. Engagement of the child in forced labour;
- (ii) Improperly inducing consent, as an intermediary, for the adoption of a child in violation of applicable international legal instruments on adoption;
- (b) Offering, obtaining, procuring or providing a child for child prostitution, as defined in article 2;
- (c) Producing, distributing, disseminating, importing, exporting, offering, selling or possessing for the above purposes child pornography as defined in article 2.
2. Subject to the provisions of the national law of a State Party, the same shall apply to an attempt to commit any of the said acts and to complicity or participation in any of the said acts.
3. Each State Party shall make such offences punishable by appropriate penalties that take into account their grave nature.
4. Subject to the provisions of its national law, each State Party shall take measures, where appropriate, to establish the liability of legal persons for offences established in paragraph 1 of the present article. Subject to the legal principles of the State Party, such liability of legal persons may be criminal, civil or administrative.
5. States Parties shall take all appropriate legal and administrative measures to ensure that all persons involved in the adoption of a child act in conformity with applicable international legal instruments.

Article 4

1. Each State Party shall take such measures as may be necessary to establish its jurisdiction over the offences referred to in article 3, paragraph 1, when the offences are committed in its territory or on board a ship or aircraft registered in that State.
2. Each State Party may take such measures as may be necessary to establish its jurisdiction over the offences referred to in article 3, paragraph 1, in the following cases:
 - (a) When the alleged offender is a national of that State or a person who has his habitual residence in its territory;
 - (b) When the victim is a national of that State.
3. Each State Party shall also take such measures as may be necessary to establish its jurisdiction over the aforementioned offences when the alleged offender is present in its territory and it does not extradite him or her to another State Party on the ground that the offence has been committed by one of its nationals.
4. The present Protocol does not exclude any criminal jurisdiction exercised in accordance with internal law.

Article 5

1. The offences referred to in article 3, paragraph 1, shall be deemed to be included as extraditable offences in any extradition treaty existing between States Parties and shall be

included as extraditable offences in every extradition treaty subsequently concluded between them, in accordance with the conditions set forth in such treaties.

2. If a State Party that makes extradition conditional on the existence of a treaty receives a request for extradition from another State Party with which it has no extradition treaty, it may consider the present Protocol to be a legal basis for extradition in respect of such offences. Extradition shall be subject to the conditions provided by the law of the requested State.

3. States Parties that do not make extradition conditional on the existence of a treaty shall recognize such offences as extraditable offences between themselves subject to the conditions provided by the law of the requested State.

4. Such offences shall be treated, for the purpose of extradition between States Parties, as if they had been committed not only in the place in which they occurred but also in the territories of the States required to establish their jurisdiction in accordance with article 4.

5. If an extradition request is made with respect to an offence described in article 3, paragraph 1, and the requested State Party does not or will not extradite on the basis of the nationality of the offender, that State shall take suitable measures to submit the case to its competent authorities for the purpose of prosecution.

Article 6

1. States Parties shall afford one another the greatest measure of assistance in connection with investigations or criminal or extradition proceedings brought in respect of the offences set forth in article 3, paragraph 1, including assistance in obtaining evidence at their disposal necessary for the proceedings.

2. States Parties shall carry out their obligations under paragraph 1 of the present article in conformity with any treaties or other arrangements on mutual legal assistance that may exist between them. In the absence of such treaties or arrangements, States Parties shall afford one another assistance in accordance with their domestic law.

Article 7

States Parties shall, subject to the provisions of their national law:

(a) Take measures to provide for the seizure and confiscation, as appropriate, of:

(i) Goods, such as materials, assets and other instrumentalities used to commit or facilitate offences under the present protocol;

(ii) Proceeds derived from such offences;

(b) Execute requests from another State Party for seizure or confiscation of goods or proceeds referred to in subparagraph (a);

(c) Take measures aimed at closing, on a temporary or definitive basis, premises used to commit such offences.

Article 8

1. States Parties shall adopt appropriate measures to protect the rights and interests of child victims of the practices prohibited under the present Protocol at all stages of the criminal justice process, in particular by:

(a) Recognizing the vulnerability of child victims and adapting procedures to recognize their special needs, including their special needs as witnesses;

(b) Informing child victims of their rights, their role and the scope, timing and progress of the proceedings and of the disposition of their cases;

(c) Allowing the views, needs and concerns of child victims to be presented and considered in proceedings where their personal interests are affected, in a manner consistent with the procedural rules of national law;

(d) Providing appropriate support services to child victims throughout the legal process;

(e) Protecting, as appropriate, the privacy and identity of child victims and taking measures in accordance with national law to avoid the inappropriate dissemination of information that could lead to the identification of child victims;

(f) Providing, in appropriate cases, for the safety of child victims, as well as that of their families and witnesses on their behalf, from intimidation and retaliation;

(g) Avoiding unnecessary delay in the disposition of cases and the execution of orders or decrees granting compensation to child victims.

2. States Parties shall ensure that uncertainty as to the actual age of the victim shall not prevent the initiation of criminal investigations, including investigations aimed at establishing the age of the victim.

3. States Parties shall ensure that, in the treatment by the criminal justice system of children who are victims of the offences described in the present Protocol, the best interest of the child shall be a primary consideration.

4. States Parties shall take measures to ensure appropriate training, in particular legal and psychological training, for the persons who work with victims of the offences prohibited under the present Protocol.

5. States Parties shall, in appropriate cases, adopt measures in order to protect the safety and integrity of those persons and/or organizations involved in the prevention and/or protection and rehabilitation of victims of such offences.

6. Nothing in the present article shall be construed to be prejudicial to or inconsistent with the rights of the accused to a fair and impartial trial.

Article 9

1. States Parties shall adopt or strengthen, implement and disseminate laws, administrative measures, social policies and programmes to prevent the offences referred to in the present Protocol. Particular attention shall be given to protect children who are especially vulnerable to such practices.

2. States Parties shall promote awareness in the public at large, including children, through information by all appropriate means, education and training, about the preventive measures and harmful effects of the offences referred to in the present Protocol. In fulfilling their obligations under this article, States Parties shall encourage the participation of the community and, in particular, children and child victims, in such information and education and training programmes, including at the international level.

3. States Parties shall take all feasible measures with the aim of ensuring all appropriate assistance to victims of such offences, including their full social reintegration and their full physical and psychological recovery.

4. States Parties shall ensure that all child victims of the offences described in the present Protocol have access to adequate procedures to seek, without discrimination, compensation

for damages from those legally responsible.

5. States Parties shall take appropriate measures aimed at effectively prohibiting the production and dissemination of material advertising the offences described in the present Protocol.

Article 10

1. States Parties shall take all necessary steps to strengthen international cooperation by multilateral, regional and bilateral arrangements for the prevention, detection, investigation, prosecution and punishment of those responsible for acts involving the sale of children, child prostitution, child pornography and child sex tourism. States Parties shall also promote international cooperation and coordination between their authorities, national and international non-governmental organizations and international organizations.

2. States Parties shall promote international cooperation to assist child victims in their physical and psychological recovery, social reintegration and repatriation.

3. States Parties shall promote the strengthening of international cooperation in order to address the root causes, such as poverty and underdevelopment, contributing to the vulnerability of children to the sale of children, child prostitution, child pornography and child sex tourism.

4. States Parties in a position to do so shall provide financial, technical or other assistance through existing multilateral, regional, bilateral or other programmes.

Article 11

Nothing in the present Protocol shall affect any provisions that are more conducive to the realization of the rights of the child and that may be contained in:

- (a) The law of a State Party;
- (b) International law in force for that State.

Article 12

1. Each State Party shall, within two years following the entry into force of the present Protocol for that State Party, submit a report to the Committee on the Rights of the Child providing comprehensive information on the measures it has taken to implement the provisions of the Protocol.

2. Following the submission of the comprehensive report, each State Party shall include in the reports they submit to the Committee on the Rights of the Child, in accordance with article 44 of the Convention, any further information with respect to the implementation of the present Protocol. Other States Parties to the Protocol shall submit a report every five years.

3. The Committee on the Rights of the Child may request from States Parties further information relevant to the implementation of the present Protocol.

Article 13

- 1. The present Protocol is open for signature by any State that is a party to the Convention or has signed it.
- 2. The present Protocol is subject to ratification and is open to accession by any State that is a party to the Convention or has signed it. Instruments of ratification or accession shall be

deposited with the Secretary- General of the United Nations.

Article 14

1. The present Protocol shall enter into force three months after the deposit of the tenth instrument of ratification or accession.
2. For each State ratifying the present Protocol or acceding to it after its entry into force, the Protocol shall enter into force one month after the date of the deposit of its own instrument of ratification or accession.

Article 15

1. Any State Party may denounce the present Protocol at any time by written notification to the Secretary- General of the United Nations, who shall thereafter inform the other States Parties to the Convention and all States that have signed the Convention. The denunciation shall take effect one year after the date of receipt of the notification by the Secretary-General.
2. Such a denunciation shall not have the effect of releasing the State Party from its obligations under the present Protocol in regard to any offence that occurs prior to the date on which the denunciation becomes effective. Nor shall such a denunciation prejudice in any way the continued consideration of any matter that is already under consideration by the Committee on the Rights of the Child prior to the date on which the denunciation becomes effective.

Article 16

1. Any State Party may propose an amendment and file it with the Secretary-General of the United Nations. The Secretary-General shall thereupon communicate the proposed amendment to States Parties with a request that they indicate whether they favour a conference of States Parties for the purpose of considering and voting upon the proposals. In the event that, within four months from the date of such communication, at least one third of the States Parties favour such a conference, the Secretary-General shall convene the conference under the auspices of the United Nations. Any amendment adopted by a majority of States Parties present and voting at the conference shall be submitted to the General Assembly of the United Nations for approval.
2. An amendment adopted in accordance with paragraph 1 of the present article shall enter into force when it has been approved by the General Assembly and accepted by a two-thirds majority of States Parties.
3. When an amendment enters into force, it shall be binding on those States Parties that have accepted it, other States Parties still being bound by the provisions of the present Protocol and any earlier amendments they have accepted.

Article 17

1. The present Protocol, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited in the archives of the United Nations.
2. The Secretary-General of the United Nations shall transmit certified copies of the present Protocol to all States Parties to the Convention and all States that have signed the Convention.

Appendix D: Optional Protocol on the Involvement of Children in Armed Conflict

**Adopted and opened for signature, ratification and accession by General Assembly
resolution A/RES/54/263 of 25 May 2000**

entry into force 12 February 2002

The States Parties to the present Protocol,

Encouraged by the overwhelming support for the Convention on the Rights of the Child, demonstrating the widespread commitment that exists to strive for the promotion and protection of the rights of the child,

Reaffirming that the rights of children require special protection, and calling for continuous improvement of the situation of children without distinction, as well as for their development and education in conditions of peace and security,

Disturbed by the harmful and widespread impact of armed conflict on children and the long-term consequences it has for durable peace, security and development,

Condemning the targeting of children in situations of armed conflict and direct attacks on objects protected under international law, including places that generally have a significant presence of children, such as schools and hospitals,

Noting the adoption of the Rome Statute of the International Criminal Court, in particular, the inclusion therein as a war crime, of conscripting or enlisting children under the age of 15 years or using them to participate actively in hostilities in both international and non-international armed conflicts,

Considering therefore that to strengthen further the implementation of rights recognized in the Convention on the Rights of the Child there is a need to increase the protection of children from involvement in armed conflict,

Noting that article 1 of the Convention on the Rights of the Child specifies that, for the purposes of that Convention, a child means every human being below the age of 18 years unless, under the law applicable to the child, majority is attained earlier,

Convinced that an optional protocol to the Convention that raises the age of possible recruitment of persons into armed forces and their participation in hostilities will contribute effectively to the implementation of the principle that the best interests of the child are to be a primary consideration in all actions concerning children,

Noting that the twenty-sixth International Conference of the Red Cross and Red Crescent in December 1995 recommended, inter alia, that parties to conflict take every feasible step to ensure that children below the age of 18 years do not take part in hostilities,

Welcoming the unanimous adoption, in June 1999, of International Labour Organization Convention No. 182 on the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour, which prohibits, inter alia, forced or compulsory recruitment

APPENDIX D: OPTIONAL PROTOCOL ON THE INVOLVEMENT OF CHILDREN IN ARMED CONFLICT

of children for use in armed conflict,

Condemning with the gravest concern the recruitment, training and use within and across national borders of children in hostilities by armed groups distinct from the armed forces of a State, and recognizing the responsibility of those who recruit, train and use children in this regard, Recalling the obligation of each party to an armed conflict to abide by the provisions of international humanitarian law,

Stressing that the present Protocol is without prejudice to the purposes and principles contained in the Charter of the United Nations, including Article 51, and relevant norms of humanitarian law,

Bearing in mind that conditions of peace and security based on full respect of the purposes and principles contained in the Charter and observance of applicable human rights instruments are indispensable for the full protection of children, in particular during armed conflicts and foreign occupation,

Recognizing the special needs of those children who are particularly vulnerable to recruitment or use in hostilities contrary to the present Protocol owing to their economic or social status or gender,

Mindful of the necessity of taking into consideration the economic, social and political root causes of the involvement of children in armed conflicts,

Convinced of the need to strengthen international cooperation in the implementation of the present Protocol, as well as the physical and psychosocial rehabilitation and social reintegration of children who are victims of armed conflict,

Encouraging the participation of the community and, in particular, children and child victims in the dissemination of informational and educational programmes concerning the implementation of the Protocol,

Have agreed as follows:

Article 1

States Parties shall take all feasible measures to ensure that members of their armed forces who have not attained the age of 18 years do not take a direct part in hostilities.

Article 2

States Parties shall ensure that persons who have not attained the age of 18 years are not compulsorily recruited into their armed forces.

Article 3

1. States Parties shall raise in years the minimum age for the voluntary recruitment of persons into their national armed forces from that set out in article 38, paragraph 3, of the Convention on the Rights of the Child, taking account of the principles contained in that article and recognizing that under the Convention persons under the age of 18 years are entitled to special protection.

2. Each State Party shall deposit a binding declaration upon ratification of or accession to the present Protocol that sets forth the minimum age at which it will permit voluntary recruitment into its national armed forces and a description of the safeguards it has adopted to ensure that

APPENDIX D: OPTIONAL PROTOCOL ON THE INVOLVEMENT OF CHILDREN IN ARMED CONFLICT

such recruitment is not forced or coerced.

3. States Parties that permit voluntary recruitment into their national armed forces under the age of 18 years shall maintain safeguards to ensure, as a minimum, that:

(a) Such recruitment is genuinely voluntary;

(b) Such recruitment is carried out with the informed consent of the person's parents or legal guardians;

(c) Such persons are fully informed of the duties involved in such military service;

(d) Such persons provide reliable proof of age prior to acceptance into national military service.

4. Each State Party may strengthen its declaration at any time by notification to that effect addressed to the Secretary-General of the United Nations, who shall inform all States Parties. Such notification shall take effect on the date on which it is received by the Secretary-General.

5. The requirement to raise the age in paragraph 1 of the present article does not apply to schools operated by or under the control of the armed forces of the States Parties, in keeping with articles 28 and 29 of the Convention on the Rights of the Child.

Article 4

1. Armed groups that are distinct from the armed forces of a State should not, under any circumstances, recruit or use in hostilities persons under the age of 18 years.

2. States Parties shall take all feasible measures to prevent such recruitment and use, including the adoption of legal measures necessary to prohibit and criminalize such practices.

3. The application of the present article shall not affect the legal status of any party to an armed conflict.

Article 5

Nothing in the present Protocol shall be construed as precluding provisions in the law of a State Party or in international instruments and international humanitarian law that are more conducive to the realization of the rights of the child.

Article 6

1. Each State Party shall take all necessary legal, administrative and other measures to ensure the effective implementation and enforcement of the provisions of the present Protocol within its jurisdiction.

2. States Parties undertake to make the principles and provisions of the present Protocol widely known and promoted by appropriate means, to adults and children alike.

3. States Parties shall take all feasible measures to ensure that persons within their jurisdiction recruited or used in hostilities contrary to the present Protocol are demobilized or otherwise released from service. States Parties shall, when necessary, accord to such persons all appropriate assistance for their physical and psychological recovery and their social reintegration.

APPENDIX D: OPTIONAL PROTOCOL ON THE INVOLVEMENT OF CHILDREN IN ARMED CONFLICT

Article 7

1. States Parties shall cooperate in the implementation of the present Protocol, including in the prevention of any activity contrary thereto and in the rehabilitation and social reintegration of persons who are victims of acts contrary thereto, including through technical cooperation and financial assistance. Such assistance and cooperation will be undertaken in consultation with the States Parties concerned and the relevant international organizations.

2. States Parties in a position to do so shall provide such assistance through existing multilateral, bilateral or other programmes or, inter alia, through a voluntary fund established in accordance with the rules of the General Assembly.

Article 8

1. Each State Party shall, within two years following the entry into force of the present Protocol for that State Party, submit a report to the Committee on the Rights of the Child providing comprehensive information on the measures it has taken to implement the provisions of the Protocol, including the measures taken to implement the provisions on participation and recruitment.

2. Following the submission of the comprehensive report, each State Party shall include in the reports it submits to the Committee on the Rights of the Child, in accordance with article 44 of the Convention, any further information with respect to the implementation of the Protocol. Other States Parties to the Protocol shall submit a report every five years.

3. The Committee on the Rights of the Child may request from States Parties further information relevant to the implementation of the present Protocol.

Article 9

1. The present Protocol is open for signature by any State that is a party to the Convention or has signed it.

2. The present Protocol is subject to ratification and is open to accession by any State. Instruments of ratification or accession shall be deposited with the Secretary-General of the United Nations.

3. The Secretary-General, in his capacity as depositary of the Convention and the Protocol, shall inform all States Parties to the Convention and all States that have signed the Convention of each instrument of declaration pursuant to article 3.

Article 10

1. The present Protocol shall enter into force three months after the deposit of the tenth instrument of ratification or accession.

2. For each State ratifying the present Protocol or acceding to it after its entry into force, the Protocol shall enter into force one month after the date of the deposit of its own instrument of ratification or accession.

Article 11

1. Any State Party may denounce the present Protocol at any time by written notification to the Secretary-General of the United Nations, who shall thereafter inform the other States Parties to the Convention and all States that have signed the Convention. The denunciation shall take effect one year after the date of receipt of the notification by the Secretary-General. If, however, on the expiry of that year the denouncing State Party is engaged in armed

conflict, the denunciation shall not take effect before the end of the armed conflict.

2. Such a denunciation shall not have the effect of releasing the State Party from its obligations under the present Protocol in regard to any act that occurs prior to the date on which the denunciation becomes effective. Nor shall such a denunciation prejudice in any way the continued consideration of any matter that is already under consideration by the Committee on the Rights of the Child prior to the date on which the denunciation becomes effective.

Article 12

1. Any State Party may propose an amendment and file it with the Secretary-General of the United Nations. The Secretary-General shall thereupon communicate the proposed amendment to States Parties with a request that they indicate whether they favour a conference of States Parties for the purpose of considering and voting upon the proposals. In the event that, within four months from the date of such communication, at least one third of the States Parties favour such a conference, the Secretary-General shall convene the conference under the auspices of the United Nations. Any amendment adopted by a majority of States Parties present and voting at the conference shall be submitted to the General Assembly of the United Nations for approval.

2. An amendment adopted in accordance with paragraph 1 of the present article shall enter into force when it has been approved by the General Assembly and accepted by a two-thirds majority of States Parties.

3. When an amendment enters into force, it shall be binding on those States Parties that have accepted it, other States Parties still being bound by the provisions of the present Protocol and any earlier amendments they have accepted.

Article 13

1. The present Protocol, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited in the archives of the United Nations.

2. The Secretary-General of the United Nations shall transmit certified copies of the present Protocol to all States Parties to the Convention and all States that have signed the Convention.

Appendix E: 2003 Concluding Observations of the Committee on the Rights of the Child



Distr. GENERAL CRC/C/15/Add.215 27 October 2003

COMMITTEE ON THE RIGHTS OF THE CHILD

Thirty-fourth session

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 44 OF THE CONVENTION

Concluding observations: Canada

1. The Committee considered the second periodic report of Canada (CRC/C/83/Add.6) at its 894th and 895th meetings (see CRC/C/SR.894 and 895), held on 17 September 2003, and adopted at the 918th meeting, held on 3 October 2003 (see CRC/C/SR.918), the following concluding observations.

A. Introduction

2. The Committee welcomes the submission of the State party's second periodic report and the detailed written replies to its list of issues (CRC/C/Q/CAN/2), which give updated information on the situation of children in the State party. However, the submission of a synthesis report based on both federal and provincial reports would have provided the Committee with a comparative analysis of the implementation of the Convention and a more coordinated and comprehensive picture of the valuable measures adopted by Canada to implement the Convention. It notes with appreciation the high-level delegation sent by the State party and welcomes the positive reactions to the suggestions and recommendations made during the discussion.

B. Follow-up measures undertaken and progress achieved by the State party

3. The Committee is encouraged by numerous initiatives undertaken by the State party and it looks forward to the completion of the National Plan of Action for Children which will further structure such initiatives and ensure their effective implementation. In particular, the Committee would like to note the following actions and programmes:

- The National Children Agenda;

- National Child Benefit;
- The establishment of the Secretary of State for Children and Youth;
- The Federal-Provincial-Territorial Council of Ministers on Social Policy Renewal;
- The Social Union Framework Agreement;
- Enactment of Bill C-27 amending the Criminal Code;
- Canada School Net;
- Gathering Strength: Canada's Aboriginal Action Plan;
- The constructive role played by the Canadian International Development Agency (CIDA) to assist developing countries in fulfilling the rights of their children and the declaration by the head of the delegation that Canada will double its international aid by 2010.

C. Principal areas of concern and recommendations

1. General measures of implementation

The Committee's previous recommendations

4. The Committee, while noting the implementation of some of the recommendations (CRC/C/15/Add.37 of 20 June 1995) it made upon consideration of the State party's initial report (CRC/C/11/Add.3), regrets that the rest have not been, or have been insufficiently, addressed, particularly those contained in: paragraph 18, referring to the possibility of withdrawing reservations; paragraph 20, with respect to data collection; paragraph 23, relating to ensuring that the general principles are reflected in domestic law; paragraph 24, relating to implementation of article 22; paragraph 25, suggesting a review of the penal legislation that allows corporal punishment. The Committee notes that those concerns and recommendations are reiterated in the present document.

5. The Committee urges the State party to make every effort to address those recommendations contained in the concluding observations on the initial report that have not yet been implemented and to provide effective follow-up to the recommendations contained in the present concluding observations on the second periodic report.

Reservations and declarations

6. The Committee notes the efforts of the Government towards the removal of the reservation to article 37 (c) of the Convention, but regrets the rather slow process and regrets even more the statement made by the delegation that the State party does not intend to withdraw its reservation to article 21. The Committee reiterates its concern with respect to the reservations maintained by the State party to articles 21 and 37 (c).

7. In light of the 1993 Vienna Declaration and Programme of Action, the Committee urges the State party to reconsider and expedite the withdrawal of the reservations made to the Convention. The Committee invites the State party to continue its dialogue with the Aboriginals with a view to the withdrawal of the reservation to article 21 of the Convention.

Legislation and implementation

8. The Committee notes that the application of a considerable part of the Convention falls within the competence of the provinces and territories, and is concerned that this may lead, in some instances, to situations where the minimum standards of the Convention are not applied to all children owing to differences at the provincial and territorial level.

9. The Committee urges the Federal Government to ensure that the provinces and territories are aware of their obligations under the Convention and that the rights in the Convention have to be implemented in all the provinces and territories through legislation and policy and other appropriate measures.

Coordination, monitoring

10. The Committee notes with satisfaction the launching in 1997 of the “National Children’s Agenda” multisectoral initiative and the creation of the position of Secretary of State for Children and Youth. However, the Committee remains concerned that neither the Continuing Committee of Officials on Human Rights nor the Secretary of State for Children and Youth is specifically entrusted with coordination and monitoring of the implementation of the Convention.

11. The Committee encourages the State party to strengthen effective coordination and monitoring, in particular between the federal, provincial and territorial authorities, in the implementation of policies for the promotion and protection of the child, as it previously recommended (CRC/C/15/Add.37, para. 20), with a view to decreasing and eliminating any possibility of disparity or discrimination in the implementation of the Convention.

National plan of action

12. The Committee notes the introduction in January 1998 of the “Gathering Strength: Canada’s Aboriginal Action Plan” and is encouraged by the preparation of a national plan of action in accordance with the Convention on the Rights of the Child and the final outcome document of United Nations General Assembly Special Session on Children, (“A World Fit For Children”). It is also encouraged by Canada’s conviction that actions in this respect must be in conformity with the Convention.

13. The Committee encourages the State party to ensure that a coherent and comprehensive rights-based national plan of action is adopted, targeting all children, especially the most vulnerable groups including Aboriginal, migrant and refugee children; with a division of responsibilities, clear priorities, a timetable and a preliminary

allocation of necessary resources in conformity with the Convention at the federal, provincial, territorial and local levels in cooperation with civil society. It also urges the Government to designate a systematic monitoring mechanism for the implementation of the national plan of action.

Independent monitoring

14. The Committee notes that eight Canadian provinces have an Ombudsman for Children but is concerned that not all of them are adequately empowered to exercise their tasks as fully independent national human rights institutions in accordance with the Principles relating to the status of national institutions for the promotion and protection of human rights (the Paris Principles, General Assembly resolution 48/134 of 20 December 1993, annex). Furthermore, the Committee regrets that such an institution at the federal level has not been established.

15. The Committee recommends that the State party establish at the federal level an ombudsman's office responsible for children's rights and ensure appropriate funding for its effective functioning. It recommends that such offices be established in the provinces that have not done so, as well as in the three territories where a high proportion of vulnerable children live. In this respect, the Committee recommends that the State party take fully into account the Paris Principles and the Committee's general comment No. 2 on the role of national human rights institutions.

Allocation of resources

16. The Committee welcomes the information provided in the report relating to the Government's contribution to the fulfilment of the rights of the child through allocating resources to a number of initiatives and programmes, notably the National Child Benefit (NCB) system aimed at improving the well-being of Canadian children living at risk by reducing and preventing child poverty. However, the Committee reiterates concerns expressed by the Committee on Economic, Social and Cultural Rights (E/C.12/1/Add.31, para. 22) and the Human Rights Committee (CCPR/C/79/Add.105, paras. 18, 20) relating to modalities of implementing NCB in some provinces.

17. The Committee invites the State party to use its regular evaluation of the impact of the National Child Benefit system and its implementation in the provinces and territories to review the system with a view to eliminating any negative or discriminatory effects it may have on certain groups of children.

18. The Committee recommends that the State party pay particular attention to the full implementation of article 4 of the Convention by prioritizing budgetary allocations so as to ensure implementation of the economic, social and cultural rights of children, in particular those belonging to marginalized and economically disadvantaged groups, "to the maximum extent of ... available resources". The Committee further encourages the State party to state clearly every year its priorities with respect to child rights issues and to identify the amount and proportion of the budget spent on children, especially on marginalized groups, at the federal, provincial and territorial levels in order to be able to

evaluate the impact of the expenditures on children and their effective utilization. The Committee encourages the State party to continue to take measures to prevent children from being disproportionately affected by future economic changes and to continue its support to non-governmental organizations working on the dissemination of the Convention.

Data collection

19. The Committee values the wealth of statistical data provided in the annex to the report and in the appendices to the written replies to the list of issues and welcomes the intention of the State party to establish a statistics institute for Aboriginal people. Nevertheless, it is of the opinion that the information is not sufficiently developed, disaggregated and well synthesized for all areas covered by the Convention, and that all persons under 18 years are not systematically included in the data collection relevant to children. The Committee would like to recall its previous concern and recommendation relating to information gathering (CRC/C/15/Add.37, para. 20), maintaining that it has not been addressed sufficiently.

20. The Committee recommends that the State party strengthen and centralize its mechanism to compile and analyse systematically disaggregated data on all children under 18 for all areas covered by the Convention, with special emphasis on the most vulnerable groups (i.e. Aboriginal children, children with disabilities, abused and neglected children, street children, children within the justice system, refugee and asylum-seeking children). The Committee urges the State party to use the indicators developed and the data collected effectively for the formulation and evaluation of legislation, policies and programmes for resource allocation and for the implementation and monitoring of the Convention.

2. General principles

Non-discrimination

21. The Committee notes positive developments with respect to measures to promote and protect cultural diversity and specific legislative measures regarding discrimination, including the Multiculturalism Act, in particular as it bears upon the residential school system, the Employment Equity Act, and the amendment to the Criminal Code introducing racial discrimination as an aggravating circumstance (see also the 2002 annual report of the Committee on the Elimination of Racial Discrimination (CERD) (A/57/18), paras. 315-343). However, the Committee joins CERD in its concerns, in particular as they relate to children, such as those relating to the Indian Act, to the extent of violence against and deaths in custody of Aboriginals and people of African and Asian descent, to existing patterns of discrimination and expressions of prejudice in the media and to the exclusion from the school system of children of migrants with no status, and remains concerned at the persistence of de facto discrimination against certain groups of children (see also *ibid.*, paras. 332, 333, 335 and 337).

22. The Committee recommends that the State party continue to strengthen its legislative

efforts to fully integrate the right to non-discrimination (article 2 of the Convention) in all relevant legislation concerning children, and that this right be effectively applied in all political, judicial and administrative decisions and in projects, programmes and services that have an impact on all children, in particular children belonging to minority and other vulnerable groups such as children with disabilities and Aboriginal children. The Committee further recommends that the State party continue to carry out comprehensive public education campaigns and undertake all necessary proactive measures to prevent and combat negative societal attitudes and practices. The Committee requests the State party to provide further information in its next report on its efforts to promote cultural diversity, taking into account the general principles of the Convention.

23. The Committee, while noting reservations expressed by Canada on the Declaration and Programme of Action adopted at the 2001 World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance, recommends that specific information be included in the next periodic report on the measures and programmes relevant to the Convention on the Rights of the Child undertaken by the State party to follow up on the Durban Declaration and Programme of Action and taking account of general comment No. 1 on article 29, paragraph 1, of the Convention (aims of education).

Best interests of the child

24. The Committee values the fact that the State party holds the principle of the best interests of the child to be of vital importance in the development of all legislation, programmes and policies concerning children and is aware of the progress made in this respect. However, the Committee remains concerned that the principle that primary consideration should be given to the best interests of the child is still not adequately defined and reflected in some legislation, court decisions and policies affecting certain children, especially those facing situations of divorce, custody and deportation, as well as Aboriginal children. Furthermore, the Committee is concerned that there is insufficient research and training for professionals in this respect.

25. The Committee recommends that the principle of “best interests of the child” contained in article 3 be appropriately analysed and objectively implemented with regard to individual and groups of children in various situations (e.g. Aboriginal children) and integrated in all reviews of legislation concerning children, legal procedures in courts, as well as in judicial and administrative decisions and in projects, programmes and services that have an impact on children. The Committee encourages the State party to ensure that research and educational programmes for professionals dealing with children are reinforced and that article 3 of the Convention is fully understood, and that this principle is effectively implemented.

3. Civil rights and freedoms

Right to an identity

26. The Committee is encouraged by the adoption of the new Citizenship of Canada Act facilitating the acquisition of citizenship for children adopted abroad by Canadian

citizens. It is equally encouraged by the establishment of the First Nations Child and Family Service providing culturally sensitive services to Aboriginal children and families within their communities.

27. The Committee recommends that the State party take further measures in accordance with article 7 of the Convention, including measures to ensure birth registration and to facilitate applications for citizenship, so as to resolve the situation of stateless children. The Committee also suggests that the State party ratify the Convention relating to the Status of Stateless Persons of 1954.

4. Family environment and alternative care

Illicit transfer and non-return

28. The Committee notes with satisfaction that Canada is a party to the Hague Convention on the Civil Aspects of International Child Abduction of 1980 and notes the concern of the State party that parental abductions of children are a growing problem.

29. The Committee recommends that the State party apply the Hague Convention to all children abducted to Canada, encourage States that are not yet party to the Hague Convention to ratify or accede to this treaty and, if necessary, conclude bilateral agreements to deal adequately with international child abduction. It further recommends that maximum assistance be provided through diplomatic and consular channels in order to resolve cases of illicit transfer and non-return in the best interests of the children involved.

Adoption

30. The Committee is encouraged by the priority accorded by the State party to promoting the Hague Convention on the Protection of Children and Cooperation in Respect of Intercountry Adoption of 1993 in Canada and abroad. However, the Committee notes that while adoption falls within the jurisdiction of the provinces and territories, the ratification of the Hague Convention has not been followed up by legal and other appropriate measures in all provinces. The Committee is also concerned that certain provinces do not recognize the right of an adopted child to know, as far as possible, her/his biological parents (art. 7).

31. The Committee recommends that the State party consider amending its legislation to ensure that information about the date and place of birth of adopted children and their biological parents are preserved and made available to these children. Furthermore, the Committee recommends that the Federal Government ensure the full implementation of The Hague Convention on the Protection of Children and Cooperation in Respect of Intercountry Adoption of 1993 throughout its territory.

Abuse and neglect

32. The Committee welcomes the efforts being made by the State party to discourage

corporal punishment by promoting research on alternatives to corporal punishment of children, supporting studies on the incidence of abuse, promoting healthy parenting and improving understanding about child abuse and its consequences. However, the Committee is deeply concerned that the State party has not enacted legislation explicitly prohibiting all forms of corporal punishment and has taken no action to remove section 43 of the Criminal Code, which allows corporal punishment.

33. The Committee recommends that the State party adopt legislation to remove the existing authorization of the use of “reasonable force” in disciplining children and explicitly prohibit all forms of violence against children, however light, within the family, in schools and in other institutions where children may be placed.

5. Basic health and welfare

Health and health services

34. The Committee is encouraged by the commitment of the Government to strengthening health care for Canadians by, inter alia, increasing the budget and focusing on Aboriginal health programmes. However, the Committee is concerned at the fact, acknowledged by the State party, that the relatively high standard of health is not shared equally by all Canadians. It notes that equal provincial and territorial compliance is a matter of concern, in particular as regards universality and accessibility in rural and northern communities and for children in Aboriginal communities. The Committee is particularly concerned at the disproportionately high prevalence of sudden infant death syndrome and foetal alcohol syndrome disorder among Aboriginal children.

35. The Committee recommends that the State party undertake measures to ensure that all children enjoy equally the same quality of health services, with special attention to indigenous children and children in rural and remote areas.

Adolescent health

36. The Committee is encouraged by the average decline in infant mortality rates in the State party, but is deeply concerned at the high mortality rate among the Aboriginal population and the high rate of suicide and substance abuse among youth belonging to this group.

37. The Committee suggests that the State party continue to give priority to studying possible causes of youth suicide and the characteristics of those who appear to be most at risk, and take steps as soon as practicable to put in place additional support, prevention and intervention programmes, e.g. in the fields of mental health, education and employment, that could reduce the occurrence of this tragic phenomenon.

Social security and childcare services and facilities

38. The Committee welcomes measures taken by the Government to provide assistance to families through expanded parental leave, increased tax deductions, child benefits and

specific programmes for Aboriginal people. The Committee is nevertheless concerned at reports relating to the high cost of childcare, scarcity of places and lack of national standards.

39. The Committee encourages the State party to undertake a comparative analysis at the provincial and territorial levels with a view to identifying variations in childcare provisions and their impact on children and to devise a coordinated approach to ensuring that quality childcare is available to all children, regardless of their economic status or place of residence.

Standard of living

40. The Committee is encouraged to learn that homelessness was made a research priority by the Canada Mortgage and Housing Corporation, as the sources of data are limited. However, the Committee shares the concerns of the Committee on Economic, Social and Cultural Rights (E/C.12/1/Add.31, paras. 24, 46) which noted that the mayors of Canada's 10 largest cities have declared homelessness to be a national disaster and urged the Government to implement a national strategy for the reduction of homelessness and poverty.

41. The Committee reiterates its previous concern relating to the emerging problem of child poverty and shares the concerns expressed by the Committee on the Elimination of Discrimination Against Women (CEDAW) relating to economic and structural changes and deepening poverty among women, which particularly affects single mothers and other vulnerable groups, and the ensuing impact this may have on children.

42. The Committee recommends that further research be carried out to identify the causes of the spread of homelessness, particularly among children, and any links between homelessness and child abuse, child prostitution, child pornography and trafficking in children. The Committee encourages the State party to further strengthen the support services it provides to homeless children while taking measures to reduce and prevent the occurrence of this phenomenon.

43. The Committee recommends that the State party continue to address the factors responsible for the increasing number of children living in poverty and that it develop programmes and policies to ensure that all families have adequate resources and facilities, paying due attention to the situation of single mothers, as suggested by CEDAW (A/52/38/Rev.1, para. 336), and other vulnerable groups.

6. Education, leisure and cultural activities

44. The Committee values the exemplary literacy rates and high level of basic education in the State party and welcomes the numerous initiatives to promote quality education, both in Canada and at the international level. The Committee is in particular encouraged by initiatives to raise the standard of education of Aboriginals living on reserves. It further notes the steps taken to address the concern of the Committee on Economic, Social and Cultural Rights (E/C.12/1/Add.31, para. 49) relating to addressing financial

obstacles to post-secondary education for low-income students. The Committee nevertheless reiterates the concern of the Committee on the Elimination of Racial Discrimination (A/57/18, para. 337) about allegations that children of migrants with no status are being excluded from school in some provinces. Furthermore, the Committee is concerned about the reduction in education spending, increasing student-teacher ratios, the reduction of the number of school boards, the high dropout rate of Aboriginal children and the availability of instruction in both official languages only “where numbers warrant”.

45. The Committee recommends that the State party further improve the quality of education throughout the State party in order to achieve the goals of article 29, paragraph 1, of the Convention and the Committee’s general comment No. 1 on the aims of education by, inter alia:

(a) Ensuring that free quality primary education that is sensitive to the cultural identity of every child is available and accessible to all children, with particular attention to children in rural communities, Aboriginal children and refugees or asylum-seekers, as well as children from other disadvantaged groups and those who need special attention, including in their own language;

(b) Ensuring that human rights education, including in children’s rights, is incorporated into the school curricula in the different languages of instruction, where applicable, and that teachers have the necessary training;

(c) Ratifying the United Nations Educational, Scientific and Cultural Organization Convention against Discrimination in Education of 1960;

(d) Adopting appropriate legislative measures to forbid the use of any form of corporal punishment in schools and encouraging child participation in discussions about disciplinary measures.

7. Special protection measures

Refugee children

46. The Committee welcomes the incorporation of the principle of the best interests of the child in the new Immigration and Refugee Protection Act (2002) and the efforts being made to address the concerns of children in the immigration process, in cooperation with the Office of the United Nations High Commissioner for Refugees and non-governmental organizations. However, the Committee notes that some of the concerns previously expressed have not been adequately addressed, in particular, in cases of family reunification, deportation and deprivation of liberty, priority is not accorded to those in greatest need of help. The Committee is especially concerned at the absence of:

(a) A national policy on unaccompanied asylum-seeking children;

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- (b) Standard procedures for the appointment of legal guardians for these children;
- (c) A definition of “separated child” and a lack of reliable data on asylum-seeking children;
Adequate training and a consistent approach by the federal authorities in referring
- (d) vulnerable children to welfare authorities.

47. In accordance with the principles and provisions of the Convention, especially articles 2, 3, 22 and 37, and with respect to children, whether seeking asylum or not, the Committee recommends that the State party:

- (a) Adopt and implement a national policy on separated children seeking asylum in Canada;
- (b) Implement a process for the appointment of guardians, clearly defining the nature and scope of such guardianship;
- (c) Refrain, as a matter of policy, from detaining unaccompanied minors and clarify the legislative intent of such detention as a measure of “last resort”, ensuring the right to speedily challenge the legality of the detention in compliance with article 37 of the Convention;
- (d) Develop better policy and operational guidelines covering the return of separated children who are not in need of international protection to their country of origin;
- (e) Ensure that refugee and asylum-seeking children have access to basic services such as education and health and that there is no discrimination in benefit entitlements for asylum-seeking families that could affect children;
- (f) Ensure that family reunification is dealt with in an expeditious manner.

Protection of children affected by armed conflict

48. The Committee notes that Canada has made a declaration with regard to the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict upon ratification, permitting voluntary recruitment into the armed forces at the age of 16 years.

49. The Committee recommends that the State party, in its report on this Optional Protocol, expected next year, provide information on the measures taken to give priority in the process of voluntary recruitment to those who are the oldest, in light of article 38, paragraph 3, of the Convention, and on its efforts to limit recruitment to persons of 18 years and older (and to review legislation accordingly).

Economic exploitation

50. The Committee greatly appreciates the fact that Canada has committed resources to

work towards the ending of economic exploitation of children on the international level. However, the Committee regrets the lack of information in the State party report relating to the situation in Canada. Furthermore, it is concerned that Canada has not ratified International Labour Organization Convention No. 138 concerning the Minimum Age for Admission to Employment and is concerned at the involvement of children under 13 years old in economic activity.

51. The Committee recommends that the State party ratify International Labour Organization Convention No. 138 concerning the Minimum Age for Admission to Employment and take the necessary measures for its effective implementation. The Committee further encourages the State party to conduct nationwide research to fully assess the extent to which children work, in order to take, when necessary, effective measures to prevent the exploitative employment of children in Canada.

Sexual exploitation and trafficking

52. The Committee is encouraged by the role Canada has played nationally and internationally in promoting awareness of sexual exploitation and working towards its reduction, including by adopting amendments to the Criminal Code in 1997 (Bill C-27) and the introduction in 2002 of Bill C-15A, facilitating the apprehension and prosecution of persons seeking the services of child victims of sexual exploitation and allowing for the prosecution in Canada of all acts of child sexual exploitation committed by Canadians abroad. The Committee notes, however, concerns relating to the vulnerability of street children and, in particular, Aboriginal children who, in disproportionate numbers, end up in the sex trade as a means of survival. The Committee is also concerned about the increase of foreign children and women trafficked into Canada.

53. The Committee recommends that the State party further increase the protection and assistance provided to victims of sexual exploitation and trafficking, including prevention measures, social reintegration, access to health care and psychological assistance, in a culturally appropriate and coordinated manner, including by enhancing cooperation with non-governmental organizations and the countries of origin.

Street children

54. The Committee regrets the lack of information on street children in the State party's report, although a certain number of children are living in the street. Its concern is accentuated by statistics from major urban centres indicating that children represent a substantial portion of Canada's homeless population, that Aboriginal children are highly overrepresented in this group, and that the causes of this phenomenon include poverty, abusive family situations and neglectful parents.

55. The Committee recommends that the State party undertake a study to assess the scope and the causes of the phenomenon of homeless children and consider establishing a comprehensive strategy to address their needs, paying particular attention to the most vulnerable groups, with the aim of preventing and reducing this phenomenon in the best interest of these children and with their participation.

Juvenile justice

56. The Committee is encouraged by the enactment of new legislation in April 2003. The Committee welcomes crime prevention initiatives and alternatives to judicial procedures. However, the Committee is concerned at the expanded use of adult sentences for children as young as 14; that the number of youths in custody is among the highest in the industrialized world; that keeping juvenile and adult offenders together in detention facilities continues to be legal; that public access to juvenile records is permitted and that the identity of young offenders can be made public. In addition, the public perceptions about youth crime are said to be inaccurate and based on media stereotypes.

57. The Committee recommends that the State party continue its efforts to establish a system of juvenile justice that fully integrates into its legislation, policies and practice the provisions and principles of the Convention, in particular articles 3, 37, 40 and 39, and other relevant international standards in this area, such as the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules), the United Nations Guidelines for the Prevention of Juvenile Delinquency (the Riyadh Guidelines), the United Nations Rules for the Protection of Juveniles Deprived of Their Liberty and the Vienna Guidelines for Action on Children in the Criminal Justice System. In particular, the Committee urges the State party:

- (a) To ensure that no person under 18 is tried as an adult, irrespective of the circumstances or the gravity of his/her offence;
- (b) To ensure that the views of the children concerned are adequately heard and respected in all court cases;
- (c) To ensure that the privacy of all children in conflict with the law is fully protected in line with article 40, paragraph 2 (b) (vii) of the Convention;
- (d) To take the necessary measures (e.g. non-custodial alternatives and conditional release) to reduce considerably the number of children in detention and ensure that detention is only used as a measure of last resort and for the shortest possible period of time, and that children are always separated from adults in detention.

Children belonging to a minority or indigenous group

58. The Committee welcomes the Statement of Reconciliation made by the Federal Government expressing Canada's profound regret for historic injustices committed against Aboriginal people, in particular within the residential school system. It also notes the priority accorded by the Government to improving the lives of Aboriginal people across Canada and by the numerous initiatives, provided for in the federal budget, that have been embarked upon since the consideration of the initial report. However, the Committee is concerned that Aboriginal children continue to experience many problems, including discrimination in several areas, with much greater frequency and severity than their non-Aboriginal peers.

59. The Committee urges the Government to pursue its efforts to address the gap in life chances between Aboriginal and non-Aboriginal children. In this regard, it reiterates in particular the observations and recommendations with respect to land and resource allocation made by United Nations human rights treaty bodies, such as the Human Rights Committee (CCPR/C/79/Add.105, para. 8), the Committee on the Elimination of Racial Discrimination (A/57/18, para. 330) and the Committee on Economic, Social and Cultural Rights (E/C.12/1/Add.31, para. 18). The Committee equally notes the recommendations of the Royal Commission on Aboriginal Peoples and encourages the State party to ensure appropriate follow-up.

8. Ratification of the Optional Protocols

60. The Committee welcomes the ratification of the Optional Protocol to the Convention on the Rights of the Child on children in armed conflict and the signature in November 2001 of the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography. The Committee urges the State party to consider early ratification of the latter.

9. Dissemination of documentation

61. In light of article 44, paragraph 6, of the Convention, the Committee recommends that the second periodic report and the written replies submitted by the State party be made widely available to the public at large and that the publication of the report be considered, along with the relevant summary records and the concluding observations adopted by the Committee. Such a document should be widely distributed in order to generate debate and awareness of the Convention and its implementation and monitoring within all levels of administration of the State party and the general public, including concerned non-governmental organizations.

10. Next report

62. The Committee underlines the importance of a reporting practice that is in full compliance with the provisions of article 44 of the Convention. An important aspect of States' responsibilities to children under the Convention includes ensuring that the United Nations Committee on the Rights of the Child has regular opportunities to examine the progress made in the Convention's implementation. In this regard, regular and timely reporting by State parties is crucial. The Committee recognizes that some State parties experience difficulties in reporting in a timely and regular manner. As an exceptional measure, in order to help the State party catch up with its reporting obligations so as to be in full compliance with the Convention, the Committee invites the State party to submit its third and fourth periodic reports by 11 January 2009, due date of the fourth periodic report. The consolidated report should not exceed 120 pages (see CRC/C/118).