

WHO'S IN CHARGE HERE?

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

**Interim Report
Standing Senate Committee on Human Rights**

Chair
The Honourable Raynell Andreychuk

Deputy Chair
The Honourable Landon Pearson

November 2005

MEMBERSHIP

The Honourable Raynell Andreychuk, *Chair*

The Honourable Landon Pearson, *Deputy Chair*

and

The Honourable Senators:

*Jack Austin, P.C. (or William Rompkey, P.C.)

George Baker, P.C.

Sharon Carstairs, P.C.

Marisa Ferretti Barth

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*Noël A. Kinsella (or Terrance R. Stratton)

Rose-Marie Losier-Cool

Donald H. Oliver, Q.C.

Vivienne Poy

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In addition, the Honourable Senators Maria Chaput, Ione Christensen, Ethel M. Cochrane, Roméo Dallaire, Elizabeth Hubley, Laurier LaPierre, Terry Mercer, Jim Munson, Lucie Pépin, Marie-P. Poulin (Charette) and Nancy Ruth 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

Line Gravel
Clerk of the Committee

ORDER OF REFERENCE

Extract from the *Journals of the Senate*, Wednesday, November 3, 2004:

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

That the Standing Senate Committee on Human Rights be authorized to examine and report upon Canada's international obligations in regard 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 Committee present its final report to the Senate no later than March 22, 2005, and that the Committee retain until April 30, 2005 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, February 23, 2005:

...that the date of presenting its final report be extended from March 22, 2005 to March 31, 2006 and that the Committee retain until April 30, 2006 all powers necessary to publicize its findings.

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

Paul Bélisle

Clerk of the Senate

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CHAIR'S FOREWORD

In November 2004, when the Committee embarked on its study of Canada's international obligations in relation to the rights and freedoms of children, its goal was to examine how Canada could maximize the impact and application of the United Nations *Convention on the Rights of the Child* on behalf of Canadian children. In the course of this study the Committee became increasingly convinced that, both in theory and in practice, children's rights in this country are not understood, or indeed provided. Yet, as was repeatedly emphasized by witnesses both in Canada and abroad, children are citizens with rights, and must be recognized as such in order to foster a culture of respect – and of rights and responsibility.

The Committee hopes that its own transformation during this study towards support for real compliance with the rights of children can be expressed, understood and replicated throughout Canada. Through this Interim Report, the Committee examined mechanisms for strengthening Canadian capacities for providing services and advantages to all children both in Canada and even beyond our borders. This Interim Report recommends various means for making these goals an effective reality, within the federal government, through Parliament, and on an independent level, identifying the need for consultation, education, and child participation.

In reviewing the *Convention on the Rights of the Child*, the Committee analyzed the international human rights treaty process and is proposing that, as Canada has fallen behind other countries in meeting today's democratic expectations, a new negotiating and implementation process is desirable.

Having completed this first stage of our study, I would like to thank the members of this Committee for the enthusiasm and dedication that each brought to the Committee table. Senators approached the issues through their own area of expertise and life experience, emphasizing their wholehearted commitment to the full respect and effective implementation of children's rights in Canada.

In particular, I would like to underscore the role of the Honourable Senator Landon Pearson (who will be retiring from the Senate this month), whose personal and professional life has been a testimony to real respect and caring for children. Throughout her career, Senator Pearson has proven her tenacity and dedication to children's issues, making significant contributions to children's rights at the public, political, and Senatorial levels.

Finally, I would like to thank the staffs 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 Dr. Line Gravel, Clerk of the Committee, Laura Barnett, the Committee's Researcher, and Kim Chao, who provided assistance for this Interim Report. 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.

This Interim 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 rights-holding citizens in our society.

EXECUTIVE SUMMARY

This Study:

- The Standing Senate Committee on Human Rights was authorized by the Senate to examine and report upon Canada's international obligations in regards to the rights and freedoms of children. Consequently the Committee undertook a study in order to understand the impact of international children's rights instruments on Canadian law.
- One of the primary aims of this study is to look at the UN *Convention on the Rights of the Child*, and analyze the obstacles to the protection of children's rights. The Committee examined whether Canadian policy and legislation reflect the provisions of international human rights instruments, and whether this country is in compliance with its international obligations. The Committee has also looked at the role of Parliament within this framework.
- Canada played an instrumental role in the drafting and promotion of the Convention, an international instrument that is unique among human rights treaties because it is the most universally ratified, and because it contains the broadest protection of rights of any international human rights treaty.
- It is critical that Canada continue to be a world leader with respect to the implementation of the Convention. In order to focus on the particular vulnerabilities of children and to ensure the fulfilled and meaningful maturation of children's rights, the rights-based perspective contained in the Convention must be clarified. Children today are persons with rights of their own that the state in which they live must fully respect and protect. The development of this conception of children has been slow, and is in fact still not fully understood or accepted either domestically or around the world.

Application of the Convention in Canada:

- 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 a shared 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.

- The *Convention on the Rights of the Child* is currently deemed to be implemented by means of the *Canadian Charter of Rights and Freedoms*, federal and provincial human rights legislation, and other federal and provincial legislation pertaining to matters addressed in the Convention. In essence, this is a policy-based approach to Canada's international obligations. The government relies on pre-existing laws, using existing mechanisms and applying the Convention through them, rather than relying on specific legislation to ensure that children's rights recognized under the Convention are respected across the board.
- With respect to Canada's reporting obligations under the *Convention on the Rights of the Child*, the Continuing Committee of Officials on Human Rights facilitates preparation of Canada's country reports to the UN Committee on the Rights of the Child. When the UN Committee 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.

Problems in the Incorporation and Implementation of 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.
- The Committee has 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. In addition, 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 UN Committee's Concluding Observations.

- From its hearings and the UN Committee's Concluding Observations, the Committee learned that due to Canada's federal nature, the vast array of laws, as well as the differing interpretations of or approaches to them in each province and territory mean that Canada lacks uniform national standards in a number of key areas with direct impact on children's rights and that the institutions established to protect children's rights in each province also perform significantly different functions.
- The Committee noted a lack of awareness in government and among the children and the general public about the Convention and the rights enshrined in it. In government, even among those dedicated to protecting children's rights, knowledge of the Convention is spotty at best.

The Committee's Suggestions for Reform:

- The Committee recommends that the federal government develop a more effective means of incorporating and implementing its international human rights obligations, both before and after ratification of an international instrument. The Continuing Committee should be informed as soon as human rights treaty negotiations begin at the international level in order to disseminate an explanatory report setting out the goals and consequences of the treaty in question, and to engage in an enhanced consultation process with all stakeholders. Ratification of any international human rights instrument should be accompanied by enabling legislation in which the federal government considers itself legally bound by its international human rights commitments. This could take the form of tabling the treaty itself in Parliament, accompanied by 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, as well as a formal statement that the federal government agrees to comply with the treaty. Finally, the Committee suggests a speedier and more consultative reporting process to UN Committees, and that Canada's country reports, the UN Committee's Concluding Observations, and the government's follow-up report be tabled in Parliament and referred to Parliamentary Committee for examination.

- The Committee recommends that Parliament establish a Children’s Commissioner to monitor implementation of the Convention and protection of children’s rights in Canada. The Commissioner should be an arm’s length independent institution, with a statutory duty to have regard to the Convention and to involve children in its operations. The Commissioner should be mandated to conduct ongoing reviews of federal legislation, services, and funding for programs affecting children and their rights; to report annually to Parliament with its assessment of the federal government’s implementation of the Convention; to undertake studies with respect to systemic issues affecting children; to conduct education campaigns; to dedicate a highly placed officer to the investigation and monitoring of the rights of Aboriginal children; and to act as a liaison with the Canadian Council of Provincial Child and Youth Advocate.
- The Committee recommends that an interdepartmental implementation working group for children’s rights be established within the federal government. The role of this working group would be to undertake review of all existing and proposed legislation using a child-based analysis; to undertake ongoing consultations with provinces, territories, and other stakeholders concerning implementation of children’s rights; to prepare the federal portion of Canada’s country report to the UN Committee; and to prepare the federal government’s follow-up report to the UN Committee. The Committee further suggests that this working group focus on awareness raising, and developing a comprehensive national education strategy about children’s rights.
- The federal government should work with the NGO community to develop the mechanisms and funding necessary to foster an effectively functional and cohesive voluntary sector for the protection of children’s rights in Canada. In working towards capacity building in this way, the federal government could facilitate the establishment of a coordination mechanism that will identify gaps in services and facilitate dialogue between NGOs and the donor community.
- Finally, the Committee suggests that the federal government provide adequate funding for effective implementation of Canada’s international human rights treaties, and the *Convention on the Rights of the Child* in particular.

SUMMARY OF RECOMMENDATIONS

RECOMMENDATION 1 – *Implementing International Human Rights Obligations in Canada*

The federal government – with the provinces, territories, Parliamentarians, and interested stakeholders – shall establish a more effective means of negotiating, incorporating and implementing its international human rights obligations. The Committee also recommends that ratification of any international human rights instruments be accompanied by enabling legislation in which the federal government considers itself legally bound by its international human rights commitments.

RECOMMENDATION 2 – *Compliance with the Convention on the Rights of the Child*

The federal government shall consider itself bound, with an obligation to comply fully with the *Convention on the Rights of the Child*.

RECOMMENDATION 3 – *Children’s Commissioner*

Parliament shall 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 shall report annually to Parliament.

RECOMMENDATION 4 – *Federal Interdepartmental Implementation Working Group for Children*

An interdepartmental implementation working group for children’s rights shall be established in order to coordinate activities, policies, and laws for children’s rights issues.

CHAPTER ONE – RATIONALE AND ROLE OF THE COMMITTEE

A. INTRODUCTION

On November 3, 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 undertook a study of the impact of international children’s rights instruments on Canadian law, since there have been very few comprehensive studies done on this issue. The Committee reviewed, and will continue to examine carefully, 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 complies with Canada’s international human rights obligations, and in keeping with a broader mandate that began with this Committee’s first report, *Promises to Keep: Implementing Canada’s Human Rights Obligations*.¹

One of the primary aims of this study is to evaluate the UN *Convention on the Rights of the Child*² and other key instruments that protect children’s rights and freedoms, as well as to examine the obstacles to such protection. The Committee has examined whether Canadian policy and legislation reflect the provisions of these international human rights instruments and whether they are in compliance with international obligations in the field. The Committee has also looked at the role of Parliament within this framework.

While the Committee originally received a mandate to report back to Parliament on this issue by March 22, 2005, it quickly realized that a more exhaustive study into children’s rights, based on a broader mandate was called for. As a result, the deadline for presentation of its final Report has been extended to March 31, 2006. This broadened study seeks to answer the following questions: Is Canada implementing the *Convention*

¹ Report of the Standing Senate Committee on Human Rights, *Promises to Keep: Implementing Canada’s Human Right Obligations*, December 2001.

² UN General Assembly Resolution 44/25 1989, see Appendix B.

on the *Rights of the Child* in domestic law and policy, and if so, how? Are society and the federal government responding to the challenges confronting today's children? This Interim Report underlines the immediate need to ensure strong protection of children's rights and well-being in Canada today, and looks to *Promises to Keep* and the testimony of numerous witnesses to evaluate the need for enhanced mechanisms to implement Canada's international obligations with respect to children more effectively.

B. THE MANDATE

1. Examining Canada's Role with Respect to Human Rights and the Convention

As was noted in *Promises to Keep*, 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.³

Witnesses such as Martha Mackinnon of Justice for Children and Youth emphasized that Canada lived up to this reputation in the context of the adoption of the *Convention on the Rights of the Child*. Canada proved itself to be a leader in that process, not only through early signature and ratification, but also by taking on a strong role both in the drafting of the Convention and in encouraging widespread adherence, as discussed in Chapter 2 Part B. The Convention was adopted unanimously by the United Nations General Assembly in 1989 and has become a universally recognized standard for children's human rights. In 1990, Canada co-hosted the first World Summit for Children. From 1999 to 2002, it played an important role in preparation for the UN General Assembly Special Session on Children, successfully negotiating text surrounding key issues such as war-affected children, Aboriginal children, and child participation.⁴ Today, the Convention is the most widely subscribed to international treaty in history, ratified by 192 nations.⁵

As Canada was seen as such a strong proponent of children's rights in the international arena in the early stages (noted by Frans Roselaars, Director of the Infocus

³ *Promises to Keep*, p. 7-8.

⁴ David Moloney, Vice-President of the Policy Branch, Canadian International Development Agency, testimony before the Standing Senate Committee on Human Rights, May 16, 2005.

⁵ Only the United States and Somalia had signed but failed to ratify the Convention as of November 2005.

Programme on the Elimination of the Worst Forms of Child Labour at the International Labour Office in Geneva), it is critical that Canada continue to be a world leader with respect to the implementation of the Convention. As stated by Minister of Health, Ujjal Dosanjh, “we cannot rest on our laurels.”⁶ Canada cannot “lose the powerful moral high ground”⁷ 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...

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.’⁸

In fact, some witnesses have stated that Canada has already fallen into a pattern where our actions do not live up to our reputation. 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.⁹

2. The Critical Importance of Focusing on Children’s Rights

These are the citizens of today, not of tomorrow.¹⁰

In attempting to highlight the necessity of addressing children’s rights, the Committee is fully aware that the world may have grown weary of the phrase “our

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

⁷ Martha Mackinnon, Executive Director, Justice for Children and Youth, testimony before the Committee, April 18, 2005.

⁸ *Ibid.*

⁹ Maxwell Yalden, Former Member, United Nations Human Rights Committee, testimony before the Committee, March 21, 2005.

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

children are our future.” While the statement remains true, witnesses have emphasized that the government, Parliament, and civil society must 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 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.¹¹

Viewing children’s rights within this framework means that children are afforded protection beyond a basic survival or needs-level, thus facilitating the creation of a sustainable environment in which such rights can be protected in the longer term.¹² 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.”¹³ As stated by the UN Committee on the Rights of the Child, “Implementation of the human rights of children must not be seen as a charitable process, bestowing favours on children.”¹⁴ Ultimately, charity does not allow individuals to achieve their full potential because it

¹¹ 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: National and International Perspectives*, Montreal, November 18, 2004.

¹² Rana Khan, Legal Officer, United Nations High Commissioner for Refugees Canada, testimony before the Committee, May 2, 2005.

¹³ Mary Robinson, “Foreword” In *A Human Rights Conceptual Framework for UNICEF*, by Marta Santos Pais, Florence, Italy: UNICEF, 1999, p. iv.

¹⁴ UN 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)*, November 27, 2003, CRC/GC/2003/5, para.11.

tends to treat people as objects, rather than as active participants in the development of their well-being.¹⁵ The three primary features of the rights-based approach are as follows:¹⁶

- 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

The rights-based 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.¹⁷ This framework also

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.¹⁸

According to Kathy Vandergrift, of World Vision Canada, 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.¹⁹

¹⁵ 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, September 26, 2005.

¹⁶ Collins, Pearson, Delany, p. 1.

¹⁷ Suzanne Williams, Managing Director, International Institute for Child Rights and Development, testimony before the Committee, February 21, 2005.

¹⁸ Collins, Pearson, Delany, p. 4.

¹⁹ Kathy Vandergrift, Chair of the Working Group on Children and Armed Conflict, World Vision Canada, testimony before the Committee, February 14, 2005.

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.²⁰ 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.²¹

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. Professor Kay Tisdall, Social Policy Professor at the University of Edinburgh, noted that such accountability "has to go all the way down."²² Further, such advocates state that with rights come responsibilities – treating children as persons with responsibilities will lead to a generation of responsible adults. The idea is to imbue all levels of society with a culture of responsibility that will only serve to improve the environment around us.

However, despite the fact that the rights-based approach is engrained in the Convention and in other international human rights instruments, witnesses emphasized that many in Canada and elsewhere continue to resist its full implementation. Professor Al Aynsley-Green, Children's Commissioner for England, told the Committee that "rights' is a dangerous word."²³ As stated by the United Nations High Commissioner for Human Rights, Louise Arbour:

The reason that 'rights talk' is resisted by the powerful is precisely because it threatens (or promises) to rectify distributions of political, economic or social power that, under internationally agreed standards and values, are unjust.

These truths are laid bare in Canada's very hesitant recognition and selective implementation of some of its international human rights obligations... Human rights obligations require no more or less than reasonable efforts within the maximum extent that resource constraints

²⁰ Dr. Cindy Kiro, Children's Commissioner of New Zealand, testimony before the Committee, May 30, 2005.

²¹ Williams testimony.

²² Kay Tisdall, Social Policy Professor, Programme Director, MSc in Childhood Studies, University of Edinburgh, testimony before the Committee, October 12, 2005.

²³ Aynsley-Green testimony.

permit, with priorities determined through inclusive democratic processes, and with an abiding concern for the situation of the most disadvantaged.²⁴

Others are simply unaware of the Convention's implications. The UNICEF Innocenti Research Centre notes that

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.²⁵

The Committee was frequently reminded of the fact that there is a distinct lack of awareness about the Convention and children's rights in Canada, and heard a wide variety of concerns about the situation of children across Canada – particularly those who are already living at a disadvantage: the medically fragile, the disabled, Aboriginal children, migrant children, sexually exploited children, and those caught in the child welfare or youth criminal justice systems.

Witnesses were critical of the perceived gap between the rhetoric and the realities of children's rights in Canada. The government recognizes the importance of children's rights in Canada, as illustrated in the recent publication of Canada's 2004 Plan of Action, *A Canada Fit for Children*,²⁶ in response to the May 2002 United Nations Special Session on Children. An introductory message to the Plan of Action emphasizes the importance of children in Canadian society and why we must focus our attention on children's rights specifically:

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

²⁴ Louise Arbour, LaFontaine Baldwin Symposium, Quebec City, March 4, 2005.

²⁵ UNICEF Innocenti Research Centre, *Independent Institutions Protecting Children's Rights*, Innocenti Digest No. 8, June 2001, p. 4.

²⁶ *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, see Appendix F.

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.”²⁷

However, many witnesses expressed concern that there is often a disconnect between intent and concrete compliance with the *Convention on the Rights of the Child*. 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.

In response to these concerns, the Committee concluded that furthering the debate on children’s rights, thus raising awareness about these rights, and creating an impetus for government action was needed. The Committee sees its role as addressing the concerns of one of the most vulnerable yet promising segments of Canadian society in order to ensure that their voices are heard.

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.”²⁸ This view was echoed in the comments of Minister of Social Development, Ken Dryden: “Fundamental to... our belief in the future, to our confidence as a country, are our children. If our children are doing okay, we are doing okay and we will be okay.”²⁹

Martha Mackinnon put the impact of ensuring children’s rights bluntly, also touching on the reluctance of many to recognize that children are persons with human rights of their own:

Kids do not vote, but they also do not pay taxes and they do not phone MPs. They are not activists in that way.

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. 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

²⁷ *Ibid.*, p. 9; The Honourable Senator Landon Pearson.

²⁸ Katherine Covell, Professor, University College of Cape Breton, testimony before the Committee, February 7, 2005.

²⁹ The Honourable Minister Ken Dryden, Minister of Social Development, testimony before the Committee, September 26, 2005.

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.³⁰

Within this context, witnesses have emphasized the particular vulnerability of children as 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.³¹ As stated by Professor Aynsley-Green and also emphasized by Professor Kay Tisdall, we must recognize that children are the “citizens of today, not of tomorrow”,³² and our policies must reflect this reality.

Suzanne Williams of the International Institute for Child Rights and Development set out the importance of children’s rights by stating:

“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 are respected and implemented on a broad scale for the benefit of all children.³³

Thus, 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.

³⁰ Mackinnon testimony.

³¹ UNICEF Innocenti Research Centre, Digest No. 8, p. 1-3, and 13; UN 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*, November 15, 2002, CRC/GC/2002/2, para. 5.

³² Aynsley-Green testimony.

³³ 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, February 21, 2005, p. 3.

Children's rights have undergone significant evolution in the history of Canada. As will be discussed more fully in Chapter 2 Part A, children are no longer considered a form of chattel or possession, nor are they any longer simply part of a family unit. Children today are persons in their own right. Professor Anne McGillivray of the University of Manitoba indicated that the development of this concept of children has been slow, and is in fact still not fully understood or accepted either domestically or around the world.

However, while international human rights mechanisms are strengthening in the modern world, they must be incorporated into national laws to be of any force and effect.

Numerous witnesses appearing before the Committee emphasized that Canada must ensure that it rises to meet this obligation. Witnesses such as lawyer, Jeffrey 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... for 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.³⁴

Through this Interim Report and its follow-up, the Committee aims to highlight these concerns about the Convention in order to bring Canada into compliance. Its report is intended to raise awareness about the Convention throughout Canada, and particularly in Parliament.

C. THIS REPORT AND THE COMMITTEE'S WORK

The Committee's long term mandate is to analyze the state of children's rights in Canada as well as to assess the situation of particular groups of children in the light of Canada's obligations under the *Convention on the Rights of the Child*. In order to

³⁴ Jeffrey Wilson, lawyer, testimony before the Committee, December 13, 2004.

achieve that aim, the Committee first examined the framework for the protection of children's rights in Canada.

1. Fact Finding and an In-Depth Examination of the Canadian Context

Beginning in December 2004, the Committee held a series of thorough hearings in Ottawa on international law with respect to the rights of children and the manner in which those international obligations are being implemented in Canada. Witnesses represented perspectives from the academic, legal and advocacy fields, as well as youth. Most recently the Committee heard from various Ministers and Departments within the federal government, on issues related to the implementation of the Convention and children's rights in general.³⁵

In addition to its hearings in Ottawa, the Committee went on several fact-finding missions – nationally, to discover particular needs and concerns across the country; and internationally, to conduct comparative analyses and to explore the intricacies of international human rights mechanisms and international perspectives on the Convention.

Early in its mandate, the Committee travelled to Geneva, Switzerland in order to meet with United Nations officials and other institutions and gain a better understanding of Canada's international children's rights obligations 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 and the Chair, Jaap Doek, for a perspective on the Convention, 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 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 with Mehr Khan-Williams, the Deputy High Commissioner for Human Rights.

During that same fact-finding mission, the Committee travelled to Stockholm, Sweden. The Committee took this opportunity to learn how a like-minded government undertakes its reporting obligations under the Convention, and implements its

³⁵ See Appendix A for a complete list of witnesses.

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 for Sweden to hear about the operation of her office and her perspective on the status of children's rights in Sweden.

In June 2005, the Committee began the first in a series of hearings across Canada to gain a much needed perspective from provincial government officials, provincial ombudsmen, non-profit service organizations, and children. Beginning in Atlantic Canada – St. John's, Newfoundland; Fredericton, New Brunswick; Charlottetown, Prince Edward Island; and Halifax, Nova Scotia – the Committee met with officials 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.

In October, the Committee travelled to the United Kingdom, to continue with its comparative analysis given the similarities between the UK 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 perspective 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, where it found that not only did Norway lead the way for the world by establishing the first-ever national children's ombudsman in 1981, but it was the only dualist country that had expressly incorporated the *Convention on the Rights of the Child* through domestic

enabling legislation.³⁶ 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.

In 2006, the Committee proposes to continue its hearings across Canada.

2. This Interim Report

This Interim Report discusses 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 discusses lessons learned, highlighting witnesses' concerns about the lack of full implementation of the Convention by the governments because of jurisdictional issues, the apparent unwillingness of various levels of governments at times to comply strictly with the terms of the Convention, the lack of uniform standards, a too-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 Committee is releasing its preliminary results and recommendations in two stages. First focusing 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*, the Committee will then study specific issues with respect to children's rights in Canada.

In this report, the Committee explores witnesses' concerns and recommends a number of mechanisms to improve Canada's ratification and incorporation processes both with respect to 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 aim to create a more effective and accountable system.

The Committee also suggests means to ensure a more effective application of the Convention in Canada. Ultimately, through this Interim Report, the Committee calls on the federal government to comply with its legal obligations respecting children – by improving institutions, public policy, and laws that affect them.

³⁶ For a discussion of Norway's *Human Rights Act, 2003*, please see footnote 197.

CHAPTER TWO – HISTORY AND BACKGROUND OF CHILDREN’S RIGHTS IN CANADIAN AND INTERNATIONAL HUMAN RIGHTS LAW

A. HISTORY OF CHILDREN’S RIGHTS IN CANADA

1. Evolution of Approaches to Children in History

Approaches to that early stage of life, known as childhood, have evolved tremendously over time. In this Chapter, the Committee comments on some of the factors upon which childhood is contingent in Canadian society. While children were once considered property of their parents, today, societies are moving towards embracing children as persons with their own rights.

During the Middle Ages in Europe, childhood was a relatively short period in a person’s life. By the time a child reached the age of 6 or 7, he or she was considered a small adult. Children were thought to be ready and able to contribute to the economic well-being of the family.

However, children were still under parental control until well into their adolescence, viewed as a form of chattel or property. At the time, the English common law adopted the principle of “reasonable chastisement,” which gave parents the right to subject their children to corporal punishment. Parents could also sell their children into apprenticeship. Ultimately, there was little to stop children from being physically or sexually abused, or forced to work in dangerous conditions.³⁷

By the 19th century, children’s role in society and the family began to change. This was a period of social reform in the United States, Great Britain and Canada, when governments began to establish publicly funded education systems, and separate courts and correction facilities for young offenders.³⁸ Children were still an essential component to the economic well-being of the family, but improvements in science and medicine increased longevity, and resulted in children being valued for their ability to care for their parents in old age. The 19th century is also known as the beginning of the “child-saving” era. Children were still not persons in their own right, but they were increasingly separated from adults, and viewed as needing special protections. The

³⁷ Nicholas Bala, “Child Welfare Law in Canada: An Introduction,” *Canadian Child Welfare Law: Children, Families, and the State* (Toronto: Thompson Educational Pub., 2004), p. 2.

³⁸ *Ibid.*, p. 3; Aynsley-Green testimony.

principle of *parens patriae*³⁹ was used by the State to look after orphans or young persons who had been neglected by their guardians. *Parens patriae* was also used in cases of young offenders, where the state took responsibility for promoting their best interests and preventing further destructive behaviour.⁴⁰ This framework was so pervasive that it “eventually became legitimized in common and statutory law in various English-speaking countries.”⁴¹ However, it was not until the early 20th century that the notion of the child as a person began to gain recognition.

2. Evolution of Approaches to Children in Canadian History

In the early years of Canadian colonial history, children in Canada had more or less the same status as their counterparts in Britain and other parts of Europe – viewed as property of their parents, and valued for their labour and economic contributions to the family. During the 17th century in New France, from the age of 7, children entered a stage in life known as *tendre jeunesse*, at which point they were expected to take on adult responsibilities, such as looking after younger siblings and working on the family farm. As they grew older, they took on greater responsibilities, to the extent that by time they reached puberty, they could theoretically be married. Most, however, waited until they were in their early 20s. At the time in New France, a child was considered a functional adult by the age of 20.⁴²

In the primarily agrarian British and French colonies of the 18th and 19th centuries, children were valued for their ability to work on the family farm and were considered an asset, rather than a liability. Travellers from England and France often remarked that the children in the colonies seemed more independent and self-reliant than their European counterparts.⁴³

Parallel to what was happening in Europe, public education became common in the late 19th century, and by 1900, many children were attending public school for at least

³⁹ The principle of *parens patriae* originated with the English kings in medieval times who acted as parent to their subjects, and had an obligation to provide the basic necessities of life and to look after them in certain cases.

⁴⁰ Marge Reitsma-Street, “More Control Than Care: A Critique of Historical and Contemporary Laws for Delinquency and Neglect of Children in Ontario,” (1989) *Canadian Journal of Women and the Law*, p. 512.

⁴¹ *Ibid.*

⁴² Neil Sutherland, “History of Childhood”, Canadian Encyclopedia, available at: <http://www.thecanadianencyclopedia.com/index.cfm?PgNm=TCE&Params=A1ARTA0001579>

⁴³ *Ibid.*

a few years. At this time, children in Canada also began to benefit from changing attitudes that considered childhood as a stage in life requiring greater protection. Improvements in technology facilitated this change. Better roads and advancements in farming methods made it easier for children to get to schools and made it less of a hardship on their families to spare the children for part of the year to attend classes.⁴⁴ The Canadian economy was also changing, evolving from a primarily agrarian society to a commerce and industry-based economy. Education played an instrumental role in extending the childhood years. As stated by England's Children's Commissioner, Professor Aynsley-Green, in his comments on the role of education, during the era of industrialization in England children began to be "given time to be children."⁴⁵

The gradual evolution from property to person status has also changed the way the State views children and the way legislation affects children in Canada. Until the late 19th century children were not protected as persons under the law, but they were protected within the family, and more specifically, by their fathers. As children gained status as persons in their own right, the State began to take on a more protective role and to remove children from familial situations that were harmful to their well-being. Until this time, states had been reluctant to interfere in the private lives of families, emphasizing the importance of parental rights over children.

3. The History of Child Protection and Child Welfare in Canada

As the State took on an increasing role in family affairs, governments became active in dealing with health standards, labour conditions, education, and emphasized the protection of children from abuse and neglect.⁴⁶ The State began to put together legislation giving power to both the state and child protection agencies to remove children from abusive homes, place them in foster care and bring cases to family court. Although these laws recognized parents as being the primary guardians, they also upheld the ability to restrict or override parental control when parents could not live up to their responsibilities.⁴⁷

⁴⁴ *Ibid.*

⁴⁵ Aynsley-Green testimony.

⁴⁶ Stuart N. Hart, "From Property to Person Status: Historical Perspective on Children's Rights," *American Psychologist* January 1991, p. 54.

⁴⁷ Brian R. Howe, "Implementing Children's Rights in a Federal State: The case of Canada's Child Protection System," (2001) *The International Journal of Children's Rights*. p. 362.

The origins of child protection laws in Canada can be traced back to 1893, when Toronto established the first Children’s Aid Society and the government of Ontario passed the *Act for the Prevention of Cruelty to and Better Protection of Children*.⁴⁸ This was the first child protection law in Canada – it made the abuse of children an indictable offence, promoted foster care and children’s aid societies, gave guardianship power to these societies, and established the office of the superintendent of neglected children.⁴⁹ Society’s attitude was also changing, as parents began to place more importance on formal education and recognized that children should be able to grow up free from harm. By the late 19th century, many municipalities had established children’s aid societies and by the early 20th century, all of Canada’s provinces had enacted child welfare legislation.⁵⁰

During the 19th century, modern ideas about child protection did emerge. Children’s aid societies, child protection societies, were given the right to apprehend children from paternal custody. Professional social workers began to take over from amateurs in the early 20th century...⁵¹

The 1960s marked a growing awareness of the issue of physical abuse of children. More reports of child abuse and neglect began to surface.⁵² A similar situation occurred with respect to reports of sexual abuse in the 1970s and 1980s. At the same time, legislation began to change. As stated by Professor McGillivray, “discoveries about physical and sexual abuse of children have resulted in more child-centred laws in the *Criminal Code* and in provincial child welfare acts.”⁵³

Until then, prevention had not formed an important part of the policies or programs of the child welfare agencies. “There was also no thought given to notions of children’s rights and children were not overtly involved in the child welfare proceedings where courts made decisions profoundly affecting their futures.”⁵⁴ Ultimately, child welfare authorities were alerted only when families failed to reach minimum threshold

⁴⁸ S.O., 56 Victoria, 1893, c. 45.

⁴⁹ Canadian Encyclopedia, *Child Welfare*, available at: <http://www.thecanadianencyclopedia.com/index.cfm?PgNm=TCE&Params=A1ARTA0001578>

⁵⁰ Bala (2004), p. 3.

⁵¹ McGillivray testimony.

⁵² Canadian Council on Children and Youth. (1978) *Admittance Restricted: The Child as Citizen in Canada*, p. 75.

⁵³ McGillivray testimony.

⁵⁴ Bala (2004), p. 3.

standards of care, as opposed to the situation that exists today, in which child abuse must be reported as soon as clearly established criteria have been breached.

4. Children’s Rights in Child Protection and Child Welfare Laws

The concept of children as persons with their own rights, rather than as objects of welfare did not become widespread until after World War II, and “[u]p until recently, ‘children’s rights’ was an oxymoron, a contradiction in terms – children do not have rights because they are children.”⁵⁵ Children on their own did not have the right to demand adequate protection and care from their parents.

In the last half of the 20th century, the concept of human rights took on sharper form, the concept of individual children’s rights culminating in the UN *Convention on the Rights of the Child*. Through the rights-based approach, children were considered full citizens entitled to minimum guarantee of social goods.⁵⁶ Recognizing children as full participants along with their parents and the state, the rights-based framework required that adults justify their actions towards children based on reason, maximum social good, and consideration of children’s rationality and preferences. The rights-based approach also emphasized the importance of the “best interests” of the child. In making decisions on behalf of children, this approach dictated that parents and the state base their actions on what is best for the child, instead of choosing the easiest or most convenient option.

Increasing sensitivity to human rights at home and abroad, as was particularly emphasized in the *Canadian Charter of Rights and Freedoms*,⁵⁷ led all the provinces to revise and amend their child protection and welfare legislation in the late 1980s and 1990s. All provincial and territorial legislation now requires that third parties who are aware of child abuse or neglect report their knowledge to law enforcement or child protection agencies.

⁵⁵ McGillivray testimony.

⁵⁶ Reitsma-Street, p. 517.

⁵⁷ *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.

B. HISTORY OF THE *CONVENTION ON THE RIGHTS OF THE CHILD*

1. The Origins of Children's Rights in International Law

The history of children's rights at the international level is generally traced to 1924 and the Save the Children International Union (SCIU). Based in Geneva, this organization was founded by an Englishwoman, Eglantyne Jebb, shortly after World War I. The SCIU drafted the first *Declaration of the Rights of the Child*⁵⁸ in 1924 ("1924 Declaration"), which was adopted that same year by the League of Nations. The 1924 Declaration established the concept of the rights of the child internationally and laid the foundation for future international legal instruments on children's rights. It was a short document, consisting of only 5 principles, and never became part of international law. However, it did highlight the social and economic entitlements of children and drew a link between child welfare and children's rights.⁵⁹

The next international declaration on children's rights emerged after World War II. In March 1959, 21 governments submitted comments on the draft of the *1959 Declaration of the Rights of the Child*⁶⁰ ("1959 Declaration") to the United Nations Secretary-General. The first draft was prepared by the UN Economic and Social Council's Social Commission. On November 20, 1959, the General Assembly unanimously adopted the Declaration without abstentions. Although the 1959 Declaration was not legally binding, the fact that it was adopted by unanimous vote in the General Assembly gave it more weight than other General Assembly resolutions and substantial moral force.⁶¹

Like the 1924 Declaration, the 1959 version was a brief document. It consisted of a preamble and 10 principles, which included the right to develop in a normal and healthy manner, in conditions of dignity (Principle 2); the right of physically, socially, or mentally disabled children to receive special treatment, education and care (Principle 5); the principle of the best interests of the child (Principle 7); protection from neglect, cruelty and exploitation (Principle 9); and the principle of non-discrimination (Principle 10).

⁵⁸ League of Nations O.J. Spec. Supp. 21, p. 43, Sept. 26, 1924.

⁵⁹ Geraldine Van Bueren, (1995) *The International Law on the Rights of the Child*, p. 8.

⁶⁰ UN General Assembly Resolution 1386(XIV), November 20, 1959.

⁶¹ Van Bueren, p. 12.

The 1959 Declaration marked a turning point in children's rights. Unlike the 1924 Declaration, which viewed children as objects of international law – “[it] basically dealt with welfare rights”;⁶² in 1959, children were no longer considered the passive recipients of rights. Children were now viewed as subjects who were able to enjoy the benefits of specific rights and freedoms.⁶³ However, neither Declaration had an enforcement mechanism.

The geopolitical realities of the time made many States wary of a binding treaty on the rights of the child. It took 20 years for some States to withdraw their opposition. However, while it can be said that they remained reluctant participants,⁶⁴ the Member States of the UN had nonetheless recognized that children required their own set of rights and protections.

2. The Creation of the *Convention on the Rights of the Child*

Stemming from these two earlier instruments, the impetus for creating an international Convention on children's rights began when the UN proclaimed 1979 as the International Year of the Child, in honour of the 20th anniversary of the 1959 Declaration. Poland initiated the process by submitting a first draft of the Convention to the Commission on Human Rights in 1978, with the hope that it would be adopted by the General Assembly to coincide with the International Year of the Child.⁶⁵ The Polish draft was almost identical to the 1959 Declaration, except for the inclusion of a short implementation mechanism. The Polish delegation was led by Dr. Adam Lopatka, Deputy Chairman of the UN Commission on Human Rights at the time. The first draft was ultimately rejected because it was insufficiently amenable to legal interpretation and enforcement. As well, the emphasis for Western governments was on civil and political rights, as opposed to the Eastern Bloc's emphasis on economic, social, and cultural rights.⁶⁶ Nevertheless, the Commission on Human Rights asked the UN Secretary-General to get “views, observations, and suggestions” from the Member States, which

⁶² McGillivray testimony.

⁶³ Van Bueren, p. 12.

⁶⁴ *Ibid.*, p. 13.

⁶⁵ *Ibid.*, p. 14.

⁶⁶ Cynthia Price Cohen, *Rights of the Child*, available at <http://www.ahrchre.com/publications/hrepack1/page55.html>

resulted in submissions from 28 states, 4 from specialized agencies, and 15 from non-governmental organizations (NGOs).⁶⁷

In 1979, the Commission on Human Rights established an open-ended Working Group, chaired by Dr. Lopatka, to negotiate and draft the Convention. The open-ended nature of the group allowed states who were not members of the Commission to participate in the drafting process.⁶⁸

The creation of the *Convention on the Rights of the Child* was an ambitious and complex undertaking.⁶⁹ Drafting took eleven years, from March 1978 to March 1989. From the beginning, the members of the Working Group wanted the Convention to achieve the following goals:⁷⁰

- Create new rights under international law for children where no such rights existed, including the right of children to preserve their identity and the right of indigenous children to practice their own culture.
- Enshrine in a global treaty rights which had previously only been acknowledged or refined in case law under regional human rights treaties.
- Create binding standards in areas in which there existed only non-binding recommendations, including safeguards in adoption procedures and the rights of mentally and physically disabled children.
- Impose new obligations in relation to the provision and protection of children, including the obligation on a state to take effective measures to abolish traditional practices prejudicial to the health of children, and to provide for rehabilitation measures for child victims of neglect, abuse, and exploitation.
- Enshrine the principle of non-discrimination and oblige states parties not to discriminate against children in their enjoyment of the Convention's rights.

Although many representatives to the UN hoped the draft Convention would be completed to coincide with the Year of the Child, it became clear during the first few meetings of the Working Group that this would not happen because the number of issues to deal with was so wide and diverse. In the end, the Working Group felt it was more important to draft a comprehensive Convention that covered all aspects of children's

⁶⁷ Van Bueren, p. 14.

⁶⁸ *Ibid.*

⁶⁹ The Convention in its present form is considerably longer than the one originally proposed by the Polish delegation in 1978. Many articles required several re-writes involving negotiations among the members of the Working Group. Between 1979 and 1987, the Working Group met for one week each year to consider proposals and amendments to articles, and to write the draft. In 1988, the group met twice for two week periods each time. The first two weeks were used to complete the first draft of the Convention, and the second to complete a review of the Convention and to revise and unify the text. In the beginning, the Working Group consisted of 43 states, eventually growing to over 80 states by the time the Convention was completed.

⁷⁰ Van Bueren, p. 16.

rights, than to conclude the negotiations quickly for the sake of symbolism. The delay in completing the draft of the Convention was also partially due to disinterest on the part of many of the UN Member States, who were involved in the negotiations surrounding the *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*⁷¹ at the same time.⁷² Negotiations on the *Convention on the Rights of the Child* did not begin in earnest until 1983. During each annual session the Working Group adopted several articles of the draft Convention. Progress was slow, despite the Working Group's efforts to have the draft completed the year following each annual meeting. It is interesting to note that the United States played a permanent role in negotiations, insisting on the inclusion of articles guaranteeing the civil rights of children, partly to challenge the Eastern Bloc's promotion of social and economic rights.

Ultimately, compromise was essential to the completion of the draft, as all participants realized that the document would have to be all-encompassing and stand up to scrutiny from the international community. Although the negotiations on the draft Convention took much longer than anyone had initially anticipated, when they were finally completed, the General Assembly unanimously adopted the draft.

3. The Participation of Non-Governmental Organizations

Although NGOs were involved from the beginning of the drafting process for the Convention,⁷³ they did not play a significant role until 1984, at which time they joined together to form the *Informal Ad Hoc NGO Group for the Drafting of the Convention on the Rights of the Child* ("NGO Group"), led by Defence for Children International, an NGO based in Geneva. The NGO Group submitted reports to the Working Group, supported proposed articles to the Convention, and made critical recommendations on how to change or improve other articles. The articles the NGO Group supported included issues absent in the original Polish draft, such as the protection of children from sexual exploitation, trafficking, torture, and armed conflict. The Group also lobbied for the article on youth criminal justice to be separated into two distinct articles. Other noteworthy contributions included the insistence on using gender-free language in the

⁷¹ General Assembly resolution 39/46, December 10, 1984.

⁷² Van Bueren, p. 13.

⁷³ This is not surprising as it was always intended that NGOs should play an active role within the UN structure, as described in Article 71, Chapter 10 of the UN *Charter*.

Convention, the encouragement of breastfeeding, and the discouragement of harmful traditional practices such as female circumcision. However, the NGO Group failed in its efforts to include provisions on the rights of internally displaced children, the protection of children from medical experimentation, and an increase in the minimum age for participation in armed combat from 15 years to 18 years of age.⁷⁴

In the beginning, some delegations resisted the involvement of NGOs; however, by the time the Convention was completed, most delegations recognized the importance of the NGOs in the drafting process.⁷⁵ By the time the drafting process for the Convention was completed, it was the most comprehensive international human rights treaty in history, including economic, social and cultural rights as well as civil and political rights. The NGO Group is still active today and its members continue to work together to facilitate the implementation of the *Convention on the Rights of the Child*.

4. Optional Protocols to the *Convention on the Rights of the Child*

The Convention is accompanied by two Optional Protocols. These Protocols are essentially side treaties dealing with a specific issue contained within the Convention.

The first Optional Protocol, on the *Sale of Children, Child Prostitution and Child Pornography*,⁷⁶ came into force on January 18, 2002. This Protocol extends the protections guaranteed to children by articles 1, 11, 21, and 32 to 36 of the Convention. It emerged out of an increasing concern about the sexual exploitation of children and recognizes the underlying conditions, including poverty and a lack of education, that make children vulnerable to such exploitation. As of November 2005, 100 countries had ratified the Optional Protocol on the sale of children.⁷⁷

The second Optional Protocol, on the *Involvement of Children in Armed Conflict*,⁷⁸ came into force on February 12, 2002. Article 38 of the Convention prohibits children under the age of 15 from being recruited into the armed forces. It was hoped that the Working Group would be able to raise the age limit to 18 years, in order to comply with Article 1 of the Convention, however, many states objected to the higher age

⁷⁴ *Ibid*, p. 142-143.

⁷⁵ *Ibid.*, p. 145.

⁷⁶ General Assembly Resolution 54/263, May 25, 2000, see Appendix C.

⁷⁷ Canada ratified this Protocol in September 2005.

⁷⁸ General Assembly Resolution 54/263, May 25, 2000, see Appendix D.

limit. If some members of the Working Group had insisted on increasing the age for military participation, the negotiations on the Convention could have collapsed. The creation of the Optional Protocol on children in armed conflict was a means of encouraging all states to raise the age of forced recruitment of children into the armed forces to the same level as the rest of the Convention. Upon ratification of this Protocol, States Parties 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 November 2005, 101 countries had ratified this Optional Protocol.⁷⁹

States Parties to the primary treaty may or may not have signed the Optional Protocols, or vice versa. For example, the United States, which has not ratified the *Convention on the Rights of the Child*, has signed and ratified the *Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography*.

5. The Committee on the Rights of the Child

Article 43 of the Convention provides for the establishment of a Committee on the Rights of the Child to monitor the implementation of the Convention among States Parties. The UN Committee is one of 7 human rights treaty bodies at the UN.⁸⁰ All States that have ratified the Convention are required to submit periodic reports to the UN Committee, which is now comprised of 18 independent experts – an increase from the original 10 – from Member States of the UN, currently including one Canadian, David Brent Parfitt. Each independent expert is elected for a 4 year term.

The Committee on the Rights of the Child is based in Geneva and meets 3 times a year, for 4 weeks each session. In addition to examining the periodic reports of states and issuing Concluding Observations, the UN Committee 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, but can also serve as a basis for work on interpreting the articles of the Convention. However, the UN Committee does not hear individual complaints.

⁷⁹ Canada ratified this Protocol in July 2001.

⁸⁰ The others are: 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.

States Parties to the Convention are required to submit an implementation report to the Committee on the Rights of the Child within 2 years of ratification of the Convention, and every 5 years thereafter. After studying the periodic reports, the UN Committee adopts “Concluding Observations” – statements on its consideration of a State’s report – that contain comments on the State’s progress in implementing the Convention and recommend how to improve implementation in areas in which the State is falling behind. The Concluding Observations have no legal effect, being of moral and persuasive authority only. However, although States Parties are under no legal obligation to put the Committee on the Rights of the Child’s recommendations into practice, the UN Committee encourages all States Parties to make their reporting process transparent and to publish the country’s report as well as the UN Committee’s Concluding Observations, in order to stimulate public debate on the Convention.

In addition to monitoring compliance with the Convention, the Committee on the Rights of the Child is also responsible for monitoring compliance with the two Optional Protocols to the Convention. A State’s report on its implementation of the Optional Protocols must be included in its periodic reports on the Convention as a whole. In 2004, Canada agreed to report on its implementation of its National Action Plan, *A Canada Fit for Children*, as well.

6. The Unique Nature of the *Convention on the Rights of the Child*

The *Convention on the Rights of the Child* is unique among human rights treaties. The fact that it was widely embraced by the international community, demonstrated by its rapid ratification and entry into force, underlines the importance that all countries place on children. In particular, the Convention is noteworthy because:⁸¹

- It contains the broadest protection of rights of any international human rights treaty.
- Its implementation set a new standard for monitoring treaty compliance.
- The circumstances under which the Convention was drafted were unusual due to the delicate interplay between government and non-governmental actors.
- The Convention has been embraced with overwhelming enthusiasm by the entire world community.

⁸¹ Price Cohen, (1990).

With respect to children's rights, the Convention also represents the first time that the needs and interests of children were "expressly formulated in terms of human rights."⁸²

7. Canada and the Convention on the Rights of the Child

As noted earlier, Canada played an instrumental role in the drafting and promotion of the Convention. From 1980-1989, Canada helped over 40 countries with varying religious, ideological, cultural and political traditions work together to produce the Convention.⁸³ At the first meeting of the Working Group in February 1979, Canada proposed that the preamble to the Convention include the first preambular paragraphs of both the *International Covenant on Civil and Political Rights*,⁸⁴ and the *International Covenant on Economic, Social and Cultural Rights*.⁸⁵ This proposal was accepted and paved the way for Canada's continuing involvement in the negotiations.⁸⁶ Like its Western allies, Canada was initially concerned that the Convention did not sufficiently address children's civil and political rights.⁸⁷ However, Canada's proposal to include references to both civil and political rights, as well as economic, social and cultural rights can be regarded as mitigating the tension between the Eastern and Western blocs.

Canada chaired drafting groups on articles 15 and 16, where Canadian proposals brought the text into line with other existing Covenants. Canada also chaired a drafting group on article 19, on the right of children to protection from abuse and neglect. In addition, Canada's proposals on articles 3 and 5 were accepted in the final draft. Finally, Canada also helped to draft proposals on articles relating to female circumcision and procedures for monitoring the Convention.

Ratification of the Convention in Canada was more complicated than for non-federal states. In 1976, federal and provincial officials with a responsibility for human rights came together to form a committee which assisted governments to respond to the

⁸² 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.

⁸³ Michael Jupp, "Justice, Not Charity: The United Nations Convention on the Rights of the Child," *On the Right Side: Canada and the Convention on the Rights of the Child*. (1990), Canadian Council on Children and Youth, p. 8.

⁸⁴ 999 U.N.T.S. 171, 1976.

⁸⁵ 993 U.N.T.S. 3, 1976.

⁸⁶ UN *Working Group Activities, 1978-1979*.

⁸⁷ Email correspondence with Marthe St-Louis (Foreign Affairs Canada).

UN Working Group drafting the Convention.⁸⁸ In 1982, a federal-provincial-territorial Working Group was established to review the progress achieved in drafting the Convention and to provide advice to the Canadian delegation. This Working Group continued until 1988.⁸⁹

In preparation for signing the Convention, the federal and provincial governments examined the provisions of the Convention in order to amend legislation as necessary to ensure compliance. To facilitate intergovernmental coordination on the implementation of the Convention and reporting to the Committee on the Rights of the Child, the federal and provincial governments referred the issue to the Continuing Committee on Human Rights, led by the Department of Canadian Heritage.

For the *Convention on the Rights of the Child*, the Continuing Committee established an informal federal-provincial-territorial subcommittee to review developments at previous negotiating sessions and, as appropriate, refine Canadian positions. Ultimately, this model proved to be of exceptional value, since it permitted Canada to sign and ratify a complex human rights treaty in a very expeditious manner.⁹⁰

Canada was able to ratify the Convention once all the provinces and territories signalled their support for the Convention by sending letters of support to the federal government.

⁸⁸ Gordon Fairweather, "Canada and the Convention: Some background information," *On the Right Side: Canada and the Convention on the Rights of the Child*. (1990), Canadian Council on Children and Youth, p. 17.

⁸⁹ John Holmes, "Canadian Ratification of International Treaties," *On the right side: Canada and the Convention on the Rights of the Child*. (1990), Canadian Council on Children and Youth, p. 19.

⁹⁰ John Holmes, Director, United Nations, Criminal and Treaty Law Division, Department of Foreign Affairs and International Trade, testimony before the Committee, June 11, 2001.

CHAPTER THREE – INTERNATIONAL TREATIES IN DOMESTIC LAW:

THE IMPLEMENTATION PROCESS

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.⁹¹

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. The government only tables treaties that it has ratified with Parliament on an *ad hoc* basis. As a result, international human rights treaties that are not directly incorporated into domestic legislation bypass the Parliamentary process.⁹²

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.⁹³ The purpose of a reservation 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*

⁹¹ *Capital Cities Communications Inc. v. Canadian Radio-Television Commission* [1978] 2 S.C.R. 141; "Labour Conventions Case" *Attorney General for Canada v. Attorney General for Ontario*, [1937] 1 D.L.R. 673 (J.C.P.C.); Joanna Harrington, "State Actors and the Democratic Deficit: The Role for Parliament in Treaty-Making" Document prepared for the Department of Justice, May 2005, p. 6-7, 23-24.

⁹² *Ibid.*, p. 2-4, 24-28.

⁹³ *Vienna Convention on the Law of Treaties*, UN Doc A/Conf 39/28, art. 2.

Law of Treaties discourages States from making reservations,⁹⁴ and requires that they “must be compatible with the goal and objective of the treaty,”⁹⁵ 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.⁹⁶

It appears that recent Canadian governments have 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.”⁹⁷ As stated by John Holmes of the Department of Foreign Affairs and International Trade when he appeared before the Committee in 2002, it is “Canada’s position that reservations to human rights treaties should be few in number and limited in scope, given that the rights protected in such treaties are intended to be universal and overarching.”⁹⁸

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 – this is neither a self-executing nor an automatic process.⁹⁹ This is in contrast to the monist model operational in countries such as the United States, where

⁹⁴ See the principles enunciated in article 26 of the *Vienna Convention* cited in Part B of this Chapter.

⁹⁵ Nicole LaViolette, *The Principal International Human Rights Instruments to which Canada has not yet Acceded* (January 2005), p. 62.

⁹⁶ J.-Maurice Arbour, *Droit international public*, 4th ed. (Cowansville, Québec: Éditions Yvon Blais, 2002) p. 99; LaViolette, p. 62.

⁹⁷ LaViolette, p. 62.

⁹⁸ John Holmes, Director, United Nations, Criminal and Treaty Law Division, Department of Foreign Affairs and International Trade, testimony before the Committee, 18 March 2002.

⁹⁹ *Capital Cities Communications Inc. v. Canadian Radio-Television Commission*, [1978] 2 S.C.R. 141; “Labour Conventions Case” *Attorney General for Canada v. Attorney General for Ontario*, [1937] 1 D.L.R. 673 (J.C.P.C.); Joanna Harrington, “State Actors and the Democratic Deficit: The Role for Parliament in Treaty-Making” Document prepared for the Department of Justice, May 2005, p. 7.

once Congress ratifies a treaty, that instrument is enforceable in American law.¹⁰⁰ 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.”¹⁰¹ 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,¹⁰² implemented in Canada through the *Crimes Against Humanity and War Crimes Act*,¹⁰³ the United Nations *Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on their Destruction*,¹⁰⁴ implemented through the *Anti-Personnel Mines Convention Implementation Act*,¹⁰⁵ and the Geneva Conventions for the Protection of War Victims, implemented by the *Geneva Conventions Act*.¹⁰⁶

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 whether any amendment or new law is required to comply with the treaty obligations.¹⁰⁷ 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

¹⁰⁰ 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*, Library of Parliament, July 2005, p. 23.

¹⁰¹ Yalden testimony.

¹⁰² UN Doc. A/CONF.183/9.

¹⁰³ S.C 2000, c. 24.

¹⁰⁴ UN Doc. A/C.1/57/L.36.

¹⁰⁵ S.C 1997, c. 33.

¹⁰⁶ R.S.C. 1985, c. G-3.

¹⁰⁷ The Honourable Irwin Cotler, Minister of Justice, testimony before the Committee, April 11, 2005.

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.¹⁰⁸

This latter method appears to be the standard with respect to Canada's approach to international human rights treaties in particular. Federal government policy in this regard is set out in the *Core document forming part of the reports of States Parties: Canada*,¹⁰⁹ 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.¹¹⁰

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 Committee notes, however, that 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.

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

¹⁰⁸ Testimony of Irit Weiser before the Standing Senate Committee on Human Rights, June 11, 2001.

¹⁰⁹ HRI/CORE/1/Add.91, January 12, 1998.

¹¹⁰ *Ibid.*, para. 138.

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.¹¹¹

As a result, implementation of international treaties where provincial laws and policies are affected is often a shared, responsibility of the federal, provincial and territorial governments, particularly in the case of human rights treaties such as the *Convention on the Rights of the Child*. As stated by Professor Wayne MacKay of Dalhousie University,

The 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.¹¹²

Government witnesses noted that, in the past, this need for provincial legislation and cooperation to ensure full compliance with Canada's international obligations has occasionally proven difficult. 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. 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.¹¹³ The Honourable Irwin Cotler, Minister of Justice, described the government's approach to these consultations:

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

¹¹¹ Dolin, p. 12-14.

¹¹² Wayne MacKay, Professor, Faculty of Law, Dalhousie University, testimony before the Committee, June 16, 2005.

¹¹³ *Promises to Keep*, p. 23. For a full discussion of the role of the Continuing Committee, please see Chapter 4 Part B1.

international instrument as well as afterwards, to ensure that Canada meets our international obligations.¹¹⁴

Yet even when these consultations and cooperation of the various jurisdictions prove difficult, Professor Peter Leuprecht of the Université de Québec à Montréal and Maxwell Yalden emphasized that 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*:

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

Article 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. Their signature is not a mere formality but entails real responsibilities to fulfill their international obligations to their utmost capacity.¹¹⁵ The failure of any States Party to furnish adequate means of enforcement constitutes a violation of the treaty. This point was emphasized in *Ariel Hollis Waldman v. Canada*,¹¹⁶ 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 – despite the fact that this preferential treatment is entrenched in section 93 of the *Constitution Act, 1867*.¹¹⁷

Such is also the position of the Committee on the Rights of the Child. It told the Committee that it expects 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. The UN Committee's latest Concluding Observations highlight this point:

¹¹⁴ Cotler testimony.

¹¹⁵ Rebecca Cook, "Violations of Women's Human Rights" (1994) 7 *Harvard Human Rights Journal*, p. 147.

¹¹⁶ ICCPR/C/67/D/694/1996, Human Rights Committee, 67th Session, October 18 to November 5, 1999.

¹¹⁷ Despite the Human Rights Committee's rebuke, the federal government responded that education was a provincial responsibility and could do nothing. For its part, the Ontario government refused to change its laws based on this ruling.

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.¹¹⁸

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.¹¹⁹

D. ENFORCEMENT MECHANISMS

Enforcement mechanisms are another important part of the implementation process when dealing with compliance with international law. While international trade treaties have traditionally been bolstered by the presence of strong enforcement mechanisms to regulate trade disputes between nations, it is only recently that international human rights has begun to utilize 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 that country's level of compliance with the particular treaty, and providing recommendations for improvement. While States Parties have no legal obligation to put the Committee's recommendations

¹¹⁸ UN Doc. CRC/C/15/Add.215, Committee on the Rights of the Child, *Concluding Observations*, para. 8-9, Appendix E.

¹¹⁹ UN Committee on the Rights of the Child, *General Comment No. 5*, para. 40.

into effect, the treaties do provide an important monitoring role and their Concluding Observations carry significant moral and persuasive weight. However, this process is not a strict “enforcement” mechanism, given the treaty bodies’ limited powers.

It is important to note that again, Parliament has no explicit role in terms of Canada’s country reports or receipt of the UN Committee’s Concluding Observations. Country reports are prepared exclusively by the government, and there is no process in Canada for Parliament to receive or comment on the UN Committee’s recommendations and criticisms.

CHAPTER FOUR – IMPLEMENTING THE CONVENTION ON THE RIGHTS OF THE CHILD

A. IMPLEMENTING THE CONVENTION

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. 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 in Atlantic Canada and abroad as to their perspectives on the *Convention on the Rights of the Child* and its impact on their lives.

One fact made clear to the Committee throughout its hearings was that the primary obstacle to effective protection of children's rights in Canada is the lack of mechanisms for implementation of the Convention.

1. Implementation and Application

Canada signed the *Convention on the Rights of the Child* on May 28, 1990 and ratified it on December 13, 1991. The Convention came into force in Canada on January 12, 1992. Article 4 of the Convention requires States Parties to take "all appropriate legislative, administrative, and other measures" for the realization of the rights of the child.

In line with its usual approach to international human rights treaties, government witnesses told the Committee that the federal government did not adopt specific or global enabling legislation to introduce the Convention into domestic law. Instead, prior to ratification, the government entered into a consultation process, reviewing and analysing existing laws across Canada to determine whether any new laws or amendments were needed to ensure conformity with the treaty. After some adjustment, the government appeared satisfied that the Convention could be deemed to be implemented by means of the *Canadian Charter of Rights and Freedoms*, federal and provincial human rights legislation, and other federal and provincial legislation pertaining to matters addressed in

the Convention.¹²⁰ Witnesses such as Irit Weiser and John Holmes in 2001, and the Honourable Irwin Cotler in 2005, informed the Committee that implementation of the Convention in Canada is essentially based on a recognition that a variety of laws across Canada work together to comply with Convention obligations and ensure the protection of children's rights. This is because 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. As stated by Minister Ken Dryden, “putting the Convention into action is not the work of any one department or agency. Rather, it cuts across all Government of Canada departments, across governments at every level and across society.”¹²¹

This policy-based approach to Canada's international obligations has led commentators such as Jeffrey Wilson, Kathy Vandergrift of World Vision Canada, Jean-François Noël of the International Bureau for Children's Rights, lawyers at Justice for Children and Youth, and the Canadian Council of Provincial Child and Youth Advocates, to argue that Canada is not in full compliance with the Convention.¹²²

What is clear is that although the federal government ultimately determined that Canadian law was in conformity with the *Convention on the Rights of the Child*, it nonetheless faced jurisdictional obstacles in arriving at this conclusion. Witnesses such as Professors Nicholas Bala and Katherine Covell, as well as Rita Karakas of Save the Children Canada and Bernard Richard, Ombudsman for New Brunswick, noted these complexities. 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, as well as the differing interpretations of or approaches to them in each province and territory add to the task of those determining whether Canada's laws are in compliance with its international obligations.

An example of the coordination hurdles inherent in the ratification process is evident in Canada's position with respect to the *Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography*. Although the federal government

¹²⁰ With reservations to articles 21 and 37(c) of the Convention. For a further discussion of these reservations, see Part A3 of this Chapter.

¹²¹ Dryden testimony.

¹²² See statements of Jeffrey Wilson in footnotes 178 and 34.

ratified that Protocol in September 2005, the fact remains that nearly 4 years elapsed between signature and ratification.

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. Witnesses such as the Honourable Irwin Cotler and Suzanne Williams of the International Institute for Child Rights and Development told the Committee that 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.¹²³ Although it must be kept in mind 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 Citizenship and Immigration)*¹²⁴ is one of the leading decisions in Canada on the influence of international law on domestic obligations, even 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.¹²⁵

¹²³ *Promises to Keep*, p. 20; Stephen Toope, "Inside and Out: The Stories of International Law and Domestic Law", (2001) 50 *University of New Brunswick Law Journal*, p. 15; *Pushpanathan v. Canada*, [1998] 1 S.C.R. 982.

¹²⁴ [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 and the issue was then sent for judicial review and was later appealed to the Supreme Court of Canada.

¹²⁵ Ruth Sullivan, *Driedger on the Construction of Statutes* (3rd ed. 1994), p. 330.

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*".¹²⁶ Minister Cotler reiterated case law on the issue during his appearance before the Committee, affirming that international law is a "relevant and persuasive authority with respect to the interpretation and application of our legislation."¹²⁷ Testimony before the Committee from outside Canada, such as Scotland's Commissioner for Children and Young People, Kathleen Marshall, who observed the "creeping authority"¹²⁸ of the Convention in domestic law, could just as easily apply at home. She noted that in Scotland, the Convention is achieving a higher domestic profile through "the back door."¹²⁹

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.¹³⁰ 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."¹³¹ Even in *Baker*, the Supreme Court emphasized the persuasive, rather than the obligatory, force of the Convention.¹³² As stated by Jean-François Noël,

¹²⁶ *Baker*, 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.

¹²⁷ Cotler testimony, relying on Dickson C.J. in *Reference re Public Service Employee Relations Act (Alberta)*, [1987] 1 S.C.R. 313.

¹²⁸ Kathleen Marshall, Scotland's Commissioner for Children and Young People, testimony before the Committee, October 12, 2005.

¹²⁹ *Ibid.*

¹³⁰ *Baker*, para. 70; Dolin, p. 8-9.

¹³¹ Dolin, p. 8.

¹³² The Honourable Justice Jacques Chamberland, International Bureau for Children's Rights Conference, *Making Children's Rights Work: National and International Perspectives*, Montreal, November 19, 2004; Jutta Brunnée and Stephen Toope, "A Hesitant Embrace: Baker and the Application of International Law by Canadian Courts" (2002) 40 *The Canadian Yearbook of International Law*, p. 3.

Despite 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.¹³³

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.¹³⁴

3. Reservations

Witnesses both in 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.

a) 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.

¹³³ Jean-François Noël, Director General, International Bureau for Children's Rights, testimony before the Committee, February 21, 2005.

¹³⁴ Weiser testimony.

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 from 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.¹³⁵

b) 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.

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.

¹³⁵ Holmes testimony, 2001.

However, despite these justifications, Canada has been criticized by the Committee on the Rights of the Child, and by numerous witnesses such as Professors William Schabas at the Irish Centre for Human Rights (National University of Ireland) and Peter Leuprecht, for its unwillingness to withdraw its reservations and conform to international standards in these regards.

c) Art. 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*¹³⁶ has been amended to ensure that no one under the age of 18 is sent into a combat zone.

B. ENFORCEMENT MECHANISM – REPORTING AND FOLLOW-UP WITH THE UN COMMITTEE

As stated 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. Representatives from the Continuing Committee appeared before the Committee in June 2001 and April 2005 to provide the Committee with information as to its role and mandate.

1. Role and Mandate of 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 the Continuing Committee 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.¹³⁷

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

¹³⁶ R.S.C. 1985, c. N-5.

¹³⁷ LaViolette, p. 61.

exchange information on implementation of human rights treaties, including the *Convention on the Rights of the Child*.

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.¹³⁸

2. Adequacy of the Reporting and Follow-Up Process in Canada

Some of the primary frustrations expressed to the 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 the UN Committee. On a very practical level, the Committee heard that the Continuing Committee of Officials on Human Rights does not operate effectively and is not an 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 fulfill these expectations – it is a consultation and coordination mechanism only.

Witnesses' concerns also 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 even 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 the Committee on the Rights of the Child, each jurisdiction prepares its own submission, with the federal component prepared by the Departments of Justice and Health. 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.

¹³⁸ Eileen Sarkar, Assistant Deputy Minister, Department of Canadian Heritage, testimony before the Committee, April 18, 2005.

The process of consolidating lengthy reports from each jurisdiction has, in the past, led to dense documents. Canada's last country report, submitted in May 2001, was 284 pages. 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.¹³⁹

The Continuing Committee's compilation of the report is also a painstakingly slow process, and has proven in the past to take at least 3 years. But Maxwell Yalden points out that Canada's complex federal structure is not a valid excuse:

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.¹⁴⁰

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.¹⁴¹

Concerns also emphasize the lack of real public or non-governmental input into development of the country report.¹⁴² While Canada's country report is comprised solely of federal, provincial, and territorial government contributions, NGO commentary has, in the past, been given to the UN Committee in a separate document prepared by the Canadian Coalition for the Rights of the Child. *Promises to Keep* criticized the absence of Parliamentary input into or scrutiny of the reporting process.¹⁴³

¹³⁹ UN Doc. CRC/C/15/Add.215, Committee on the Rights of the Child, *Concluding Observations*, para. 2.

¹⁴⁰ Yalden testimony.

¹⁴¹ *Ibid.*

¹⁴² *Promises to Keep*, p. 24.

¹⁴³ *Ibid.*, p. 31.

In addition to these problems, the Office of the UN High Commissioner for Human Rights (OHCHR) recognizes that its own demands are onerous and is currently undertaking an examination of 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.¹⁴⁴

Witnesses such as Maxwell Yalden and the Committee on the Rights of the Child have emphasized to the Committee that this entire process must be transformed, both in Canada and within 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

i) The Substance

The UN Committee's Concluding Observations provide comments on the substantive areas in which it feels Canada has not lived up to its obligations under the *Convention on the Rights of the Child*. In its two past Concluding Observations (1995 and 2003) with respect to Canada, the UN Committee has been consistent in its criticism of four important issues:

- High levels of child poverty in Canada;
- Children in migration – this includes trafficking in children, problems faced by separated children, settlement and integration of child migrants, and more generic problems faced by immigrant and asylum-seeking children;
- Aboriginal children – Aboriginal children are disproportionately affected by a number of issues facing children across Canada, such as child protection issues, youth criminal justice, health and suicide rates, and poverty;
- Corporal punishment – Section 43 of Canada's *Criminal Code*¹⁴⁵ contains a "reasonable chastisement" defence, allowing the correction of children by force. This provision has recently come under intense scrutiny. In January 2004, the Supreme Court of Canada upheld section 43 in face of a constitutional challenge,

¹⁴⁴ Deirdre Kent, Counsellor, Canadian Mission in Geneva, testimony before the Committee, January 27, 2005; OHCHR, "Enhancing the Human Rights Treaty Body System: The Treaty Bodies' Response to the Secretary-General's *Agenda for Further Change*" available at: <http://www.ohchr.org/english/bodies/treaty/reform.htm>

¹⁴⁵ R.S.C. 1985, c. C-46.

finding that the *Criminal Code* provision did not violate the life, liberty and security of the person, equality, or cruel and unusual punishment rights contained in the *Charter*.¹⁴⁶ The UN Committee has been consistently critical of this decision and of the section 43 defence in its Concluding Observations.

ii) The Process

The Geneva-based NGO Group for the *Convention on the Rights of the Child* and the UN Committee noted that Canada's approach to receiving the UN Committee's Concluding Observations is problematic. When the Committee on the Rights of the Child 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, there is little other effort made to publicly disseminate the UN Committee's comments and criticisms or to ensure public debate or follow up. Witnesses such as the Committee on the Rights of the Child, representatives from the Inter-Parliamentary Union, and the NGO Group, have also criticized the lack of transparency in this process, noting the absence of any role for Parliament in reception and dissemination of the Concluding Observations.¹⁴⁷

Currently, the NGO Group is concerned that few people in Canada are aware of the Committee on the Rights of the Child's Concluding Observations, commenting that these Observations often have significant impact for one year and are then forgotten.¹⁴⁸ 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 was particularly so given that its Concluding Observations tend to be "shelved" by the government.

Professor Anne Bayefsky of York University, appearing before the Committee in 2001, commented on the lack of transparency in both the reporting process and in receipt of the Concluding Observations:

¹⁴⁶ *Canadian Foundation for Children, Youth, and the Law v. Canada (A.G.)*. (2004) 1 S.R.C. 76.

¹⁴⁷ See also *Promises to Keep*, p. 24 and 31.

¹⁴⁸ Elaine Petitot-Côté, IBFAN, and Hélène Sackstein, IAW, NGO Group for the *Convention on the Rights of the Child*, testimony before the Committee, January 28, 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.¹⁴⁹

c) The Committee's Findings Concerning the Reporting and Follow-Up Process

On the basis of testimony from across Canada and abroad, the 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 Convention and the state of children's rights in Canada.

In addition, although the Continuing Committee itself meets twice a year, there has been no intergovernmental meeting on human rights at the ministerial level in over 15 years. Four years ago, in *Promises to Keep*, this Committee criticized the Continuing Committee's inactivity in this respect. On June 11, 2001, Norman Moyer, Chair of the Continuing Committee told the 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

¹⁴⁹ Anne Bayefsky, Professor, Department of Political Science, York University, testimony before the Committee, June 4, 2001.

that you may have on the nature of the committee will be much appreciated.¹⁵⁰

In testimony before the Committee this year, Eileen Sarkar of Canadian Heritage stated that “Your comments were taken into account, and I believe at the last meeting of the [Continuing] Committee there was some discussion of the possibility of proposing to ministers a ministerial-level meeting in 2006.”¹⁵¹ The Committee awaits 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.¹⁵²

What is lacking is real political involvement in the process, either at a ministerial or a Parliamentary level. This democratic deficit – which is only increased by the lack of transparency inherent in the current system, either through awareness raising or public input – leads the Committee to the conclusion that that Canada’s current reporting process and follow-up mechanism in terms of the *Convention on the Rights of the Child* (but also with respect to other conventions) are wholly inadequate.

C. COMPLEXITIES OF IMPLEMENTATION

1. Canada’s Federal Nature

a) Implementation

While how Canada handles its treaty ratification and implementation process more generally is the primary obstacle to effective protection of children’s rights in Canada, a number of other, more specific, factors also play a role. Canada’s federal nature is one inevitable element that adds a level of complexity to implementing the

¹⁵⁰ Norman Moyer, Assistant Deputy Minister, Canadian Identity, Chair of the Continuing Committee of Officials on Human Rights, testimony before the Committee, June 11, 2001.

¹⁵¹ Sarkar testimony.

¹⁵² *Promises to Keep*, p. 24.

Convention in Canada. Jurisdiction is an issue of significant consideration when applying children's rights on the ground.

i) National Standards

Many of these witnesses, 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 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. Witnesses such as Professor Susan Reid of St. Thomas University, Peter Dudding of the Child Welfare League of Canada, Jahanshah Assadi, the UN High Commissioner for Refugees Representative in Canada, and representatives from the International Labour Office, commented that the absence of national standards has led to varying levels of protection across Canada.

For example, at the International Labour Office, Jane Stewart, Executive Director for the Employment Sector, and Frans Roselaars, Director of the Infocus Programme on the Elimination of the Worst Forms of Child Labour, emphasized that Canada is not able to ratify ILO *Convention No. 138 Concerning Minimum Age for Admission to Employment*¹⁵³ because each province has a different minimum age. While they commented that Canada remains broadly respectful of the principles enumerated in Convention No. 138, the fact that this Convention has not been ratified, and that some provinces do allow employment for children below the minimum age specified in the Convention, has meant that Canada is becoming "badly branded" among the 141 other States Parties.¹⁵⁴ 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... 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.

¹⁵³ 1015 U.N.T.S. 297.

¹⁵⁴ Jane Stewart, Acting Executive Director for the Employment Sector, 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, January 27, 2005.

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.¹⁵⁵

As well, during its hearings in Atlantic Canada, the Committee heard testimony as to varying standards concerning the provision of public health care to autistic children, and policies with respect to the separation of young offenders from adults. With regards to young offenders, witnesses told the Committee that governments have, in the past, used Canada's reservation under article 37(c) to combine young offenders and adults in facilities as a pragmatic solution simply to fulfill an immediate need, rather than in accordance with the actual justifications for the reservation put forward by the federal government.¹⁵⁶ Professor Susan Reid noted that, "we have used it, unfortunately, as a way to make sure our beds are full..."¹⁵⁷

Finally, many witnesses, including Peter Dudding and Jahanshah Assadi, commented on the lack of a uniform national age with respect to child protection issues. While in British Columbia, youth receive some form of protection under child welfare legislation until the age of 19, in Ontario, the cut-off age is 16. These variances have meant that service providers dealing with migrant children who arrive in Canada without their parents must 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 over 16. Witnesses noted that this same cut-off age also creates a contradiction with respect to the age until which children must remain in school in some provinces. As stated by Professor Susan Reid,

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.¹⁵⁸

¹⁵⁵ Committee on the Rights of the Child, *Concluding Observations*, paras. 50-51.

¹⁵⁶ See Part A3(b) of this Chapter for a discussion of these justifications.

¹⁵⁷ Susan Reid, Associate Professor, Department of Criminology and Criminal Justice, Director, Centre for Youth at Risk, St. Thomas University, testimony before the Committee, June 14, 2005.

¹⁵⁸ *Ibid.*

Echoing such concerns in its study on the impact of the implementation of the *Convention on the Rights of the Child*, the UNICEF Innocenti Research Centre emphasized that despite a country like Canada's federal nature, governments must be careful to ensure that provincial differences do not "lead to discrimination against some children because they happen to live in a certain province, state or region."¹⁵⁹

ii) Provincial Institutions Dealing with Children's Rights

Through its hearings, the Committee learned that the institutions established to protect children's rights in each province also perform significantly different functions. These independent 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 are set out below:

- **Saskatchewan** (Children's Advocate) – In Saskatchewan, the powers of the Children's Advocate are set out in *The Ombudsman and Children's Advocate Act*.¹⁶⁰ The role of the Advocate is to engage in public education campaigns concerning children's rights, work to resolve disputes and conduct independent investigations of concerns involving services to children from provincial departments and agencies, conduct research to improve the interests and well-being of children, make recommendations with respect to services provided to children by provincial departments and agencies, and review decisions made by provincial departments and agencies.
- **Ontario** (Office of Child and Family Services) – In Ontario, the powers of the Chief Advocate are set out in the *Child and Family Services Act*.¹⁶¹ The role of the Advocate is to coordinate and administer a system of advocacy, except before a court, on behalf of children and families dealing with services from approved agencies, and to advise the Minister of Community, Family and Children's Services on matters and issues concerning the interests of those children and families, as well as reporting gaps in service, operational issues, and recommending solutions. While the Office acts at arms length to the service delivery system, it reports administratively to the Assistant Deputy Minister. Although the Office is not yet fully independent, the provincial government is proposing new legislation to rectify this situation.¹⁶²
- **Quebec** (Commission des droits de la personne et des droits de la jeunesse de Québec) – In Quebec, the powers of the Commission are set out in the *Youth*

¹⁵⁹ 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: http://www.unicef-icdc.org/publications/pdf/CRC_Impact_summaryreport.pdf

¹⁶⁰ R.S.S., O-4.

¹⁶¹ R.S.O. 1990, c. C-11

¹⁶² "McGuinty Government Moves to Make Ontario's Child Advocate Independent" News Release, March 8, 2005.

Protection Act.¹⁶³ Rather than having one Advocate with staff, the Commission is composed of 15 members who investigate individual and more systemic complaints of discrimination, harassment, as well as child protection issues. The Commission can refer any situation to the tribunal, where the Commission has reason to believe that a child's rights have been violated by persons, bodies, or institutions. The Commission may also make recommendations or refer issues to the provincial government.

- **Nova Scotia** (Ombudsman) – In Nova Scotia, the powers of the Ombudsman, with a specialized youth and children mandate, are set out in the *Ombudsman's Act*.¹⁶⁴ The Ombudsman may resolve disputes or investigate concerns involving services to children provided by provincial or municipal departments or agencies; make recommendations with respect to these services; conduct research to improve the interests and well-being of children in government care; report to the Minister, departments or agencies; and engage in public education campaigns.
- **New Brunswick** (Ombudsman) – In New Brunswick, the powers of the Ombudsman are set out in the *Ombudsman Act*.¹⁶⁵ The Ombudsman may investigate complaints against administrative decisions and acts of provincial officials, agencies or organizations, and any municipality to determine if the decisions or actions were unreasonable, unjust, oppressive or discriminatory. Although the Office of the Ombudsman does not have a specific mandate to protect only children's rights, it does respond to complaints pertaining to children's rights on a regular basis. In 2004, the Office recommended the establishment of a children's advocate for the province. As a result, the *Child and Youth Advocate Act*¹⁶⁶ came into force in April 2005. However, as of the writing of this report, no one had been appointed as Child and Youth Advocate, and the provincial legislature was considering a bill to amend the Act that could curtail the role of this Advocate.¹⁶⁷
- **Prince Edward Island** – Prince Edward Island is the only province with no provincial body dedicated to ensuring the protection of children's rights.
- **Territories** – None of the territories have a Children's Advocate Office. The Yukon Office of the Ombudsman has no specific mandate to deal with children's rights issues.

None of these bodies are constituted under legislation referring to the *Convention on the Rights of the Child*, although in practice, all make reference to the Convention in the course of their work.¹⁶⁸

¹⁶³ R.S.Q., c. P-34.

¹⁶⁴ R.S.N.S. 1989, c. 327.

¹⁶⁵ R.S.N.B., O-5.

¹⁶⁶ R.S.N.B. C-2.5.

¹⁶⁷ Bernard Richard, Ombudsman for New Brunswick, testimony before the Committee, June 14, 2005.

¹⁶⁸ 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, p. 31-32 and 49-51.

b) Maximizing Coordination

The Committee notes that the issue of jurisdictional complexity often contributes to a certain lack of coordination in terms of implementing the Convention. 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.”¹⁶⁹

Certainly there is widespread recognition of the importance of children across government – throughout its hearings the Committee was overwhelmed by expressions of concern and care for children’s rights in each jurisdiction. The Honourable Irwin Cotler made the protection of vulnerable persons one of his primary objectives upon his appointment as Minister of Justice in December 2003. At an international human rights symposium in January 2005, Minister Cotler highlighted the importance of upholding the *Convention on the Rights of the Child* and its Optional Protocols, signaling that the protection of children must be at the forefront of the national and international agenda – the “tragedies of children’s rights must end.”¹⁷⁰ Before the Committee in April 2005, he stated that:

The test of a just society, a society organized around the principles of equality and human dignity, is how it treats its children and other vulnerable persons, how we protect them from disadvantage and discrimination.¹⁷¹

The problem is that political will is often 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.”¹⁷²

Yet, given Canada’s federal system, the Committee believes that jurisdictional complexities are manageable. Suzanne Williams noted that,

While [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.

¹⁶⁹ Williams testimony.

¹⁷⁰ The Honourable Irwin Cotler, Minister of Justice, Raoul Wallenberg Day, International Human Rights Symposium, York University, January 17, 2005.

¹⁷¹ Cotler testimony.

¹⁷² Vandergrift testimony.

A real strength that we have is the diversity in this country. Jurisdictional challenges should not be considered a barrier that cannot be overcome.¹⁷³

The Committee concluded that it should look 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.

c) Compliance

In its discussions about implementation and compliance, the Committee learned that a key concern among a wide variety of witnesses is the federal government's unwillingness to directly incorporate international human rights treaties. In particular, these concerns were expressed by Jeffrey Wilson, Kathy Vandergrift, Jean-François Noël of the International Bureau for Children's Rights, lawyers at Justice for Children and Youth, and the Canadian Council of Provincial Child and Youth Advocates.

Because of the intricate series of federal, provincial, and territorial laws that must conform with a convention before it may be ratified, the Minister of Justice made it clear in his testimony that the federal government is only willing to accept implementation of the *Convention on the Rights of the Child* by means of the *Canadian Charter of Rights and Freedoms*, federal and provincial human rights legislation, and other legislation pertaining to matters addressed in the Convention.

As noted in earlier in this Chapter and in Chapter 3, when dealing with international human rights treaties, the federal government conducts a review and analysis of existing laws, and usually determines that no modification of Canadian law is required, as the domestic laws already in place conform to the treaty obligations.¹⁷⁴ With respect to the *Convention on the Rights of the Child*, the federal government's argument was 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

¹⁷³ Williams testimony.

¹⁷⁴ Irit Weiser, "Effect in Domestic Law of International Human Rights Treaties Ratified Without Implementing Legislation" in Canadian Council of International Law, *The Impact of International Law on the Practice of Law in Canada: Proceedings of the 27th Annual Conference of the Canadian Council of International Law, Ottawa, October 15-18, 1998* (Cambridge: Kluwer Law International, 1999), p. 132.

Convention itself. As stated by John Holmes at the Department of Foreign Affairs in 2001,

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.¹⁷⁵

The argument is that because the federal government worked to ensure that Canada fulfills 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.

The 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.”¹⁷⁶ “Compliance can be said to occur when the actual behavior of a given subject conforms to prescribed behavior...”¹⁷⁷ Witnesses appearing before the 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 Jeffrey 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.¹⁷⁸

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

as 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

¹⁷⁵ Holmes testimony, 2001.

¹⁷⁶ Judy Pearsal ed., *Concise Oxford English Dictionary: Thumb Index Edition*, 10th ed. Revised (Oxford: Oxford University Press, 2002).

¹⁷⁷ Oran Young, *Compliance and Public Authority* (Baltimore: Johns Hopkins University Press, 1979), p. 172.

¹⁷⁸ Wilson testimony.

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.¹⁷⁹

Minister Dosanjh gave a more cautious response to the question of whether Canada is effectively implementing the Convention,

when 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.¹⁸⁰

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 compliance with the Convention, if there is no legislation directly incorporating the terms of the Convention, what recourse does a child, adult, or institution that does not believe that Canada's laws are in compliance with its international human rights commitments have? At the present time, no body or government other than the Committee on the Rights of the Child has a mandate to respond to such concerns. Witnesses such as Jeffrey Wilson, Kathy Vandergrift, Jean-François Noel, Justice for Children and Youth, and the Canadian Council of Provincial Child and Youth Advocates 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 the Convention is every 5 years, in its report to the UN Committee. Maxwell Yalden, former Member with the UN Human Rights Committee expressed his frustration with the Canadian approach: "I do not believe that we can hide behind this non-incorporation doctrine."¹⁸¹

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

¹⁷⁹ Cotler testimony.

¹⁸⁰ Dosanjh testimony.

¹⁸¹ Yalden testimony.

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.¹⁸²

Such testimony has led the Committee to ask 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?

The Committee notes that Canada's federal nature produces unique challenges for efficient and effective application of the Convention. Because this particular Convention spans 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 cooperation is slow. As stated by Minister 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."¹⁸³

Ultimately, Canada has an obligation to make best efforts to implement international treaties domestically, no matter what jurisdictional hurdles are entrenched in the Constitution.

2. Lack of Awareness Concerning the Convention

Finally, the Committee has heard numerous witnesses express concern about the lack of awareness, both in government and among the public, of the Convention and the rights enshrined in it. Throughout its hearings, the Committee has become aware that there is very little knowledge of the Convention outside academic and advocacy circles.

¹⁸² Cotler testimony.

¹⁸³ Dosanjh testimony.

In government, even among those dedicated to protecting children's rights, knowledge of the 15 year old Convention is spotty at best.

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 tool or a framework to protect children's rights. Christine Brennan of the Office of the Ombudsman of Nova Scotia told the Committee that,

in 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 *Convention on the Rights of the Child*. As always, youth issues and rights are at the bottom of the serious issues in the country.¹⁸⁴

Bernard Richard, Ombudsman for New Brunswick who is currently also responsible for dealing with children's rights issues, responded to a question concerning how often the New Brunswick public civil service and legislature used or even knew of 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.¹⁸⁵

Perhaps less surprisingly, children themselves were unaware of the existence of the Convention and the rights enshrined within it. In both Newfoundland and Labrador

¹⁸⁴ Christine Brennan, Supervisor of Youth and Senior Services, Office of the Ombudsman of Nova Scotia, testimony before the Committee, June 16, 2005.

¹⁸⁵ Richard testimony.

and in New Brunswick, the Committee met with self-aware youth from a variety of backgrounds who had never heard of the *Convention on the Rights of the Child* before preparing for their meeting with the Committee. 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, in St. John's, Newfoundland,

Florian called me about a week ago and asked me to come here... He told me 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 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.¹⁸⁶

In Fredericton, New Brunswick, Ryan Bresson told the Committee that “the first thing is, I think it should be taught in the curriculum at schools because at least half of us did not even hear about this. We cannot protect our rights if we do not know our rights.”¹⁸⁷

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.”¹⁸⁸), witnesses from across Canada have told the Committee that this is not enough. Individuals such as Professor Katherine Covell; Janet Mirwaldt, Manitoba's Children's Advocate; and Dr. Cindy Kiro, New Zealand's Children's Commissioner, have indicated that for the Convention to ever be fully and effectively

¹⁸⁶ Megan Fitzgerald, testimony before the Committee, June 13, 2005.

¹⁸⁷ Ryan Bresson, testimony before the Committee, June 14, 2005.

¹⁸⁸ Katie Cook, testimony before the Committee, June 14, 2005. Professor Al Aynsley-Green, England's Commissioner for Children, made similar comments, stating that children tend to know that they have rights, if not their Convention rights *per se*.

implemented in Canada, the public and the Convention's primary stakeholders must know how particular rights affect their lives and have the potential to alter the framework around them when they are not being respected. Witnesses emphasize 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.¹⁸⁹

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.

On the basis of testimony, the Committee has concluded that the low level of public awareness of the Convention in Canada is an issue that should be rectified before we can safely point to effective implementation of the Convention at home.

D. THE COMMITTEE'S FINDINGS

As a result of these observations, the Committee finds that Canada does not take its international human rights obligations seriously enough. Evidence before the Committee indicates that jurisdictional complexities, the absence of effective institutions, an uncertain approach to human rights law, lack of transparency and political involvement, and a lack of awareness of the rights enshrined in the Convention, have led to ineffective application of the *Convention on the Rights of the Child* in the Canadian context. The Committee finds that the federal government's approach to compliance with children's rights, and with the Convention in particular, is inadequate.

This is so despite the hopeful tone adopted in *Baker* concerning the government's obligation to respect the values outlined in the *Convention on the Rights of the Child*. As noted earlier in this Chapter, although international human rights norms have been given scope by the government and courts to play a role domestically, it is still a secondary one. While international law is a consideration in the judicial decision-making process, the

¹⁸⁹ UN Committee on the Rights of the Child, *General Comment No. 5*, para. 66.

values reflected in international instruments that are not directly incorporated 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; the question is simply of how effectively they are accomplishing this task. Canada's courts have begun to move towards referring to the *Convention on the Rights of the Child* in a variety of areas of the law – from immigration to child protection issues.¹⁹⁰ But 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.

Witnesses have repeatedly stated that tangible mechanisms are needed to ensure the implementation of the rights contained in the Convention at home, as well as ensuring enhanced government and Parliamentary accountability to children and all citizens. These suggested mechanisms include a form of enabling legislation, the establishment of monitoring bodies to oversee the protection of children's rights at the federal level; 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

¹⁹⁰ 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, in which 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 interest 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".

raising concerning the rights enshrined in the Convention; capacity-building in the voluntary sector; and most importantly, ensuring the involvement of children throughout these processes. The Committee is also particularly concerned with finding an effective role for Parliament in the fostering of an environment that is more conducive to the real protection of children's rights in Canada. These issues will be discussed further in the following Chapter.

CHAPTER FIVE – MECHANISMS FOR CHANGE

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.¹⁹¹

A. INTRODUCTION

Months of testimony – complemented by the observations, criticism, and recommendations of Committee on the Rights of the Child – have convinced the Committee of the inadequacy of Canada’s approach to implementing the *Convention on the Rights of the Child*, and by extension, international human rights treaties more generally. The Committee has arrived at a number of proposals for change based on what it has heard. These deal with both mechanisms to transform how Canada ratifies and incorporates its international human rights obligations, as well as specific mechanisms to ensure enhanced implementation of the *Convention on the Rights of the Child*.

Through its recommendations, the Committee seeks to ensure enhanced levels of accountability to children and all citizens – working to transform Canada’s international human rights obligations into meaningful law, policy, and practice.

B. IMPLEMENTING INTERNATIONAL HUMAN RIGHTS OBLIGATIONS IN CANADA – A TEMPLATE FOR RATIFICATION AND INCORPORATION

As the Committee began to discover during its hearings for *Promises to Keep*, Canada’s current ratification and incorporation process for international human rights treaties is inefficient and ineffective. Neither inclusive nor transparent, the mechanisms currently in place only occasionally lead to real compliance. No body has ultimate responsibility for ensuring that international human rights conventions are effectively implemented in Canada. The Committee’s hearings surrounding the *Convention on the Rights of the Child* have demonstrated that a democratic deficit exists, and that the public at large, as well as the most affected stakeholders, are often unaware of relevant treaties and the rights contained in them.

¹⁹¹ The Honourable Minister Irwin Cotler, International Bureau for Children’s Rights Conference, *Making Children’s Rights Work: National and International Perspectives*, Montreal, November 18, 2004.

The Committee cannot turn back time to suggest improved means of approaching the *Convention the Rights of the Child*. However, the Committee can suggest a process that could be put in place in order to transform the country's approach to international human rights treaties in the future.

1. The Treaty Negotiation Process

a) The Need for Early Consultation and Cooperation

As seen in Chapter 2's discussion of the history of the *Convention on the Rights of the Child*, Canada is invariably involved as soon as the United Nations or international community begin to prepare any new international human rights instrument. The federal government is aware of the commitments under discussion, even if not involved in the negotiations themselves.

Witnesses' concerns with respect to the ratification process have made it clear that that changes should be made at this stage to most effectively begin the awareness-raising and consultative processes essential to the proper functioning of any implementation mechanism. As soon as international treaty negotiations begin, the wheels at home should begin to turn in order to ensure national awareness of the issues at stake and the obligations that may have to be undertaken by all levels of government across Canada. Coordination is not a simple task. However, working early in consultation with Parliament, the provinces and territories, and civil society stakeholders would ensure an increased level of cooperation, with more opportunity for coordination in the long-run. As stated by Suzanne Williams of the International Institute for Child Rights and Development, "It is about setting up dialogue, which is a constant challenge in the federal system, but it is possible."¹⁹²

While many provincial witnesses expressed concern about the difficulties of jurisdictional coordination, they emphasized that informal networks are important to making the system work. Bernard Richard, New Brunswick's Ombudsman, said that he "would be concerned that we could 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."¹⁹³ Collaborating in these early stages, would make it easier to ensure an informal

¹⁹² Williams testimony.

¹⁹³ Richard testimony.

information network allowing provincial and territorial governments to know what is expected of them in terms of Canada's commitments under any given international human rights treaty.

b) Getting the Process Started

Based on its hearings, the Committee has concluded that **a mechanism is needed to kick-start this early consultation process.** The government, through its Ministers, should take ownership of the process and work with the Continuing Committee of Officials on Human Rights to develop a more open, transparent, and consultative process. **The Continuing Committee of Officials for Human Rights should be informed as soon as human rights treaty negotiations begin, in order to get consultations under way.**

As already noted, numerous witnesses have expressed concern that the Continuing Committee is ineffective. The Continuing Committee lacks both political will and an effective mandate, and is unable to fulfill the Committee's goals and recommendations as presently constituted. **The Committee suggests remedying this situation by taking responsibility for the Continuing Committee away from Canadian Heritage and giving it to the Department of Justice.** This approach was proposed by Professor Joanna Harrington of the University of Alberta, who found it "quite shocking that Canada's international human rights treaties are within the Department of Heritage",¹⁹⁴ and that such an approach marginalized Canada's 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.

c) The Consultation Process – Explanatory Report and an Opportunity for Response

The Committee suggests that the government ensure that the Continuing Committee is mandated to begin consultations to examine the implications of the treaty

¹⁹⁴ Joanna Harrington, Professor, Faculty of Law, University of Alberta, testimony before the Committee, September 26, 2005.

under negotiation. As a first step in this process, **the Continuing Committee could 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”¹⁹⁵ 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 and financial implications; and the economic, environmental, social and cultural effects of the treaty.**¹⁹⁶ **The report should be disseminated widely**, and should certainly be available on the Continuing Committee’s website.

The explanatory report distributed, witnesses such as Professor Ken Norman of the University of Saskatchewan emphasized the need for the federal government, through the Continuing Committee, **to provide a forum for response, conducting consultations with Parliament, all levels of government, and individual stakeholders.**

This entire report and consultation process should be part of the federal government’s standard procedure for reviewing and analyzing existing federal and provincial law to determine whether any amendment or new legislation is required 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 goals for incorporation and implementation, as well as its assessment of whether pre-existing laws are in compliance.

2. Signature and Ratification

a) At the Federal Level – A Formal Declaration of Intent

A number of witnesses appearing before the Committee, including Jeffrey Wilson, Kathy Vandergrift of World Vision Canada, Jean-François Noël of the International Bureau for Children’s Rights, lawyers at Justice for Children and Youth, and the Canadian Council of Provincial Child and Youth Advocates, placed significant emphasis on the need for Canada’s international human rights obligations to be

¹⁹⁵ For a more complete description of the National Interest Analysis, please see: Parliament of Australia, Joint Standing Committee on Treaties, “Committee Establishment, Role, and History”, available at: <http://www.aph.gov.au/house/committee/jsct/ppgrole.htm>

¹⁹⁶ Harrington, p. 41.

specifically incorporated into Canadian law through some form of enabling legislation.¹⁹⁷ In response to these concerns, **the Committee suggests that the federal government table a “Declaration of intent to comply” in Parliament** once the Continuing Committee’s consultations are completed, the Executive branch has signed the international instrument, signalling its intent to proceed towards ratification and implementation, and the federal government has determined that all legislation across the country conforms with the treaty.

This need not be an onerous process. 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 3 – is valid. Witnesses such as 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

¹⁹⁷ 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, in 2003, the Norwegian government incorporated the *Convention on the Rights of the Child* and its two Optional Protocols into Norway’s *Human Rights Act*. 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 having strengthened reference to the *Convention on the Rights of the Child*’s principles in other domestic child-related legislation.

However, having taken such a strong step to fully incorporate the Convention into domestic law, Norwegian officials were quick to emphasize to the Committee that this is perhaps not a realistically practical gesture. 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 strong practical 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, October 14, 2005.)

infrastructure does not exist, does little and may even be counter-productive in some respects.¹⁹⁸

However, the tabling of an informal Declaration of intent to comply could officially signal the federal government's intentions and create tangible promises against which the government can be measured in Canadian courts and law. **This could simply involve tabling the treaty in Parliament, accompanied by 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, as well as a formal statement that the federal government agrees to comply with the treaty.**

The simpler the better. As stated by Mike Comeau at the New Brunswick Department of Justice,

Standard form anythings... that facilitate provincial and territorial work are always helpful. The challenge is to have standard form legislation that is facilitative, that makes things easier as opposed to making them more complex.¹⁹⁹

Tabling such a Declaration of intent would also firmly establish the government's interpretation of the rights contained in that treaty. 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 also 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;²⁰⁰ and it could give the treaty "teeth", allowing for the possibility of real repercussions in courts and elsewhere when obligations are ignored.

Finally, 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, instead congratulating the federal government for

¹⁹⁸ Inter-Parliamentary Union, *Child Protection: A Handbook for Parliamentarians* Handbook for Parliamentarians No. 17 (Geneva: Inter-Parliamentary Union and UNICEF, 2004), p. 26-27.

¹⁹⁹ Mike Comeau, Director of Policy and Planning, New Brunswick Department of Justice, testimony before the Committee, June 14, 2005.

²⁰⁰ Vandergrift testimony.

ratification without realizing that this act in no way fully binds the nation. As stated by Martha Mackinnon at 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.²⁰¹

b) Working with the Provinces and Territories

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 forum of the Continuing Committee to engage in informal discussions with the provinces and territories.**

Having signed the treaty and by extension, created an expectation for the provinces and territories to abide by the treaty through their legislation and policies, witnesses emphasized that the federal government cannot walk away, just as it cannot place the blame for lack of compliance on jurisdictional issues. **The Committee strongly suggests that the federal government establish a mechanism to help fund and provide resources to the provinces and territories, so as to facilitate their capacity to comply with Canada's international obligations.**

c) Upon Ratification

This process would ensure that the Executive still has full powers to both sign and ratify international human rights treaties, but that the process would be more open and accountable to the public. As stated by Professor Ken Norman 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."²⁰² The key is finding a voice for Parliament to ensure accountability to the public, enhancing jurisdictional cooperation and coordination, raising public awareness concerning Canada's commitments in international law, and establishing a more formal process to ensure compliance with those commitments.

²⁰¹ Mackinnon testimony.

²⁰² Ken Norman, Professor, University of Saskatchewan, testimony before the Committee, June 11, 2001.

The Committee suggests that after the Executive officially ratifies the treaty, the international instrument be tabled in both Houses of Parliament.

3. Post Ratification – Ensuring Effective Implementation of Canada’s International Treaty Obligations

a) 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, witnesses emphasized the need for more efficiency, transparency, and accountability in the process for reporting to the UN. As already noted, the current reporting process to UN treaty bodies is cumbersome and inefficient – a problem both for treaty bodies that must read and analyze the reports,²⁰³ as well as for the Continuing Committee of Officials on Human Rights that must deal with the complexities of jurisdictional coordination.

Witnesses such as Tara Ashtakala of the Canadian Coalition for the Rights of the Child and Maxwell Yalden emphasized that one of the first steps towards reforming this process could be to ensure the responsible Ministers ensure that the Continuing Committee abides by realistic timeframes. They commented that **the Continuing Committee should begin its consultations earlier, giving provinces and territories ample forewarning of their 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 4 or 5 years depending on the treaty.²⁰⁴ The Committee believes that **Parliament should also be given a place at the table during these consultations, with specific invitation extended to Parliamentarians with expertise in the particular issue area under discussion.**

Once the report is prepared, the Committee notes that Parliament has an important role to play in awareness-raising and enhancing government accountability by monitoring levels of compliance. Following suggestions from a number of witnesses, including Professor Joanna Harrington and those arising from the Committee’s fact finding missions in Europe, the Committee has concluded that **Canada’s country reports, and**

²⁰³ See comments of Maxwell Yalden and the Committee on the Rights of the Child in its Concluding Observations, Chapter 4 Part B2(a).

²⁰⁴ As an example, while the *Convention on the Rights of the Child* requires periodic country reports every 5 years, the *Convention Against Torture* and the *Convention on the Elimination of All Forms of Discrimination against Women* require reports every 4 years.

later the UN treaty body’s 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 countries such as Sweden, which tables the Concluding Observations of the Committee on the Rights of the Child with its Parliament. Once these documents are referred to them, Parliamentary Committees could call advocacy groups and individuals experts to comment on the documents and their observations about Canada’s compliance with its international obligations. The Committees could also call on government Ministers and department officials to respond. 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] Committee. 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.²⁰⁵

Such an approach would ensure the institutionalization of continued consultation and scrutiny of the application and implementation of Canada’s international human rights obligations.²⁰⁶ 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. This 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.²⁰⁷

During its 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

²⁰⁵ Yalden testimony.

²⁰⁶ Harrington, p. 41.

²⁰⁷ UN Committee on the Rights of the Child, *General Comment No. 5*, para. 71.

Observations.²⁰⁸ 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.²⁰⁹

Ultimately, the UN reporting process is one of consciousness-raising and moral suasion, as the UN treaty bodies themselves lack any power of enforcement. The Committee's recommendations can only serve to enhance these powers. A Member of the Committee on the Rights of the Child observed to the Committee that the involvement of Parliamentarians creates an important opportunity for instigating change in democratic societies.²¹⁰

b) 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 conform to Canada's international human rights obligations.

The Committee heard that currently, the government and Parliament use the *Canadian Charter of Rights and Freedoms* as a "checklist" for all government departments to ensure that basic rights and freedoms are respected when proposing new legislation and policy – the Minister of Justice is required by statute to ensure the compliance of proposed government legislation with the *Charter*.²¹¹

Yet, despite the fact that the Supreme Court of Canada has ruled that the *Charter* should generally be presumed to provide at least as much protection as those rights

²⁰⁸ Swedish network of Parliamentarians, testimony before the Committee, January 31, 2005.

²⁰⁹ Inter-Parliamentary Union, p. 22.

²¹⁰ UN Committee on the Rights of the Child, testimony before the Committee, January 28, 2005.

²¹¹ *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

enshrined in international human rights instruments,²¹² 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. As stated by Professor 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.²¹³

These rights are already well established in Canadian law – adding this extra process would not be an overly onerous task. Rather, through its hearings, the Committee has come to believe that this step is fundamentally necessary to the protection of human rights and compliance with Canada’s international human rights obligations.

4. The Committee’s Comments

In order to adequately respond to witnesses’ concerns, the Committee has concluded that both Parliament and civil society must be assured of an enhanced role in the international human rights treaty ratification process. By ensuring such transparency, scrutiny, and consultation, Canada’s international treaty obligations will gain legitimacy, accompanied by enhanced government accountability and compliance with their terms.²¹⁴

There may be associated costs with implementing this more consultative process – 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 decreasing complexity and ensuring enhanced levels of cooperation, leading to increased coordination, and, in the long-run, a more efficient use of time.

One of the most important points to be taken away from this discussion is that witnesses do not argue that Canada should rush into its international human rights

²¹² *Reference re Public Service Employee Relations Act (Alberta)*.

²¹³ Harrington testimony.

²¹⁴ Harrington, p. 40.

commitments. Rather, the Committee has recommended mechanisms to promote consciousness-raising among all jurisdictions and stakeholders in order to ensure cooperation, coordination, and compliance with Canada's international obligations at all levels 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 government and Parliamentarians accountable to their nation.²¹⁵

RECOMMENDATION 1

The federal government – with the provinces, territories, Parliamentarians, and interested stakeholders – shall establish a more effective means of negotiating, incorporating and implementing its international human rights obligations. The Committee also recommends that ratification of any international human rights instruments be accompanied by enabling legislation in which the federal government considers itself legally bound by its international human rights commitments.

C. IMPLEMENTING THE *CONVENTION ON THE RIGHTS OF THE CHILD*

Returning to the specific issue of Canada's international obligations with respect to the rights and freedoms of children, the Committee's hearings and investigations have led the Committee to the conclusion that the *Convention on the Rights of the Child* is not solidly embedded in either Canadian law, policy, or our national psyche. Canadians are too often unaware of the rights enshrined in the Convention, while the government and courts only use it as a strongly worded guiding principle with which they attempt to ensure that our 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.

The Committee's observations during its study for *Promises to Keep*, and again in this study through the lens of children's rights, have led the Committee to recommend making implementation of Canada's international human rights obligations simpler, more transparent, and effective – both before treaties are signed and afterwards. Within this framework, the Committee has sought to find an enhanced role for Parliament to increase accountability for government as a whole. Most importantly, witnesses have repeatedly

²¹⁵ *Ibid.*, p. 43.

emphasized the absolute need to hear the voices of children and ensure that their presence and needs are felt in all aspects of Canadian legislation and policy.

Other Canadian jurisdictions are taking their own approaches to the full incorporation of children's rights. In Quebec, the Commission des droits de la personne et des droits de la jeunesse proposed amending the Quebec *Charter of Human Rights and Freedoms*²¹⁶ to include a statement that the Quebec *Charter* is inspired by international legal instruments relating to human rights and freedoms – in particular the *Universal Declaration of Human Rights*, the *International Covenant on Civil and Political Rights*, the *International Covenant on Economic, Social, and Cultural Rights*, and the *Convention on the Rights of the Child*.²¹⁷ Such recommendations are an example to other provinces, territories, and Human Rights Commissions across Canada.

In the 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 full respect for the rights and freedoms of children at home, it must improve its level of actual compliance with the Convention.²¹⁸ As noted by Professor Peter Leuprecht, 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 part of the state to take whatever measures are necessary to enable children to enjoy and exercise their rights.²¹⁹

Having concluded that the federal government does not have effective mechanisms in place to ensure compliance with its international human rights treaty obligations, ample evidence before the Committee has led the Committee to conclude that additional mechanisms need to be put in place to ensure effective protection of children's rights in Canada. In response to concerns expressed by the Committee on the Rights of the Child and witnesses across Canada and abroad, the Committee will make

²¹⁶ R.S.Q. c. C-12.

²¹⁷ Pierre Bosset, Michel Coutu, Muriel Garon, François Fournier "Après 25 ans: La Charte Québécoise des droits et libertés – Review of Recommendations" Commission des droits de la personne et des droits de la jeunesse, 2003.

²¹⁸ UN Committee on the Rights of the Child testimony.

²¹⁹ Peter Leuprecht, Professor, Université du Québec à Montréal, testimony before the Committee, February 21, 2005.

proposals to guarantee systematic monitoring of implementation of the Convention in order to ensure effective compliance. These include proposals for the establishment of a federal interdepartmental implementation working group for coordination and monitoring of 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. Within each of these recommendations, the Committee 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.

RECOMMENDATION 2

The federal government shall consider itself bound, with an obligation to comply fully with the *Convention on the Rights of the Child*.

1. Children's Commissioner

a) The Body

In addition to lacking an interdepartmental body to coordinate federal government activities, legislation, and policy, witnesses and the UN Committee pointed out 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. The Committee itself has met with the Children's Ombudsmen in Norway and Sweden, the Children's Commissioners in New Zealand, Scotland, and England.

During its hearings across Canada and abroad, 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.** 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 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.²²⁰

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 States Party's obligations under article 4 of the Convention, stating that

the Committee on the Rights of the Child considers the establishment of such bodies to fall within the commitment made by States parties upon ratification to ensure the implementation of the Convention and advance the universal realization of children's rights.²²¹

The Paris Principles Relating to the Status of National Human Rights Institutions,²²² adopted by the UN General Assembly in 1993 list the essential elements of such national human rights institutions: a broad mandate established through legislation; a 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.

i) 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 legislation was changed in 2003 to highlight this distinction, emphasized the importance of such an approach. Dr. Cindy Kiro, Children’s Commissioner for New Zealand, 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

²²⁰ UN Committee on the Rights of the Child, *Concluding Observations*, paras. 14-15.

²²¹ UN Committee on the Rights of the Child, *General Comment No. 2*, para. 1.

²²² UN Doc. A/RES/48/134 (1993).

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.²²³

ii) 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.²²⁴ As noted by the Committee on the Rights of the Child,

The 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.²²⁵

The situation of Norway's Ombudsman for Children, Reidar Hjermand, 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 warned by the Ministry that issues such as government provision of baby bonuses to parents who keep their children out of pre-school are of a political nature, and thus not appropriate for comment or criticism from the monitoring body.²²⁶

As well, while Professor Kay Tisdall of the University of Edinburgh emphasized that the *Convention on the Rights of the Child* must be more than “just an empty

²²³ Kiro testimony.

²²⁴ 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, p. 5-7.

²²⁵ UN Committee on the Rights of the Child, *General Comment No. 2*, para. 11.

²²⁶ Reidar Hjermand, Norwegian Ombudsman for Children, testimony before the Committee, October 14, 2005.

office”,²²⁷ Professor Nicholas Bala of Queen’s University and Jeffrey 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.

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.²²⁸

iii) 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 Official Languages Commissioner 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.²²⁹

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***. In 1993, Sweden enacted the first legislation to

²²⁷ Tisdall testimony.

²²⁸ Wilson testimony, and Nicholas Bala, Professor, Faculty of Law, Queen’s University, testimony before the Committee, December 13, 2004.

²²⁹ Rita Karakas, Executive Director, Save the Children Canada, testimony before the Committee, February 7, 2005.

explicitly link the Ombudsman's mandate to domestic implementation of the Convention.²³⁰ As well, in addition to referring to the Convention, the New Zealand legislation includes the international instrument as an appendix, thus emphasizing its centrality to the Commissioner's role.

Finally, Canada's new law should include a statutory responsibility for the Children's Commissioner to hear from and involve children in its operations. This point will be discussed further in Part C1(b)(vi) of this section.

iv) Accountability

As was highlighted by numerous witnesses, including Ontario's Child Advocate, the Committee believes that one of the primary purposes of the Children's Commissioner should be to ensure the government's accountability to children and all citizens. The Committee emphasizes that this body cannot merely serve as a reason for Parliamentarians and government to step away from their responsibilities in terms of children's rights. The Commissioner must be given sufficient powers to act in order to ensure effective protection of children's rights in Canada. 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.²³¹

b) The Role of the Children's Commissioner

i) 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. The Committee recognizes that it is the government's role to implement the Convention, but that alternate mechanisms are needed to ensure the effectiveness of that implementation.

All witnesses in support of such a body emphasized that **the Children's Commissioner should conduct ongoing examinations of federal legislation, services,**

²³⁰ 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.

²³¹ Judy Finlay, Deborah Parker-Loewen, and Janet Mirwaldt, Canadian Council of Provincial Child and Youth Advocates, "Submission to the Senate Standing Committee on Human Rights", Brief submitted to the Committee, February 21, 2005, p. 13.

and funding for programs affecting children and their rights – making “recommendations, assessments and criticisms”²³² of government action or inaction in order to facilitate change. The Commissioner must work to keep the government to its promises,²³³ highlighting ways in which Canadian law, policy, and practice fail to respect the rights outlined in the Convention.²³⁴

The Committee suggests that the Children’s Commissioner also be mandated to assist the federal government with preparation of Canada’s periodic report 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 involve 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 its 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. Minister Ken Dryden strongly supported such a report, commenting that:

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? 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?²³⁵

²³² Inter-Parliamentary Union, p. 37.

²³³ Marshall testimony.

²³⁴ Kathleen Marshall, the new 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, Professor 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, while 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.

²³⁵ Dryden testimony.

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.”²³⁶ 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.”²³⁷

ii) Investigative Powers

Witnesses such as Deborah Parker-Loewen, Children’s Advocate for Saskatchewan, and Jean-François Noël were adamant that **the Children’s Commissioner also be endowed with significant independent investigative powers – not just of the government’s implementation of the Convention, but also of more systemic issues and complaints 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 Professor Joanna Harrington, the Committee suggests that the role of Canada’s Commissioner ultimately be to act as a general spokesperson for children and conduct systemic investigations, similar to the role of the Children’s Ombudsman 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, rather than dealing with individual complaints itself.²³⁸ This would mean referral of specific issues to the provincial child advocates and ombudsmen, as well as immigration and Aboriginal issues 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

²³⁶ UN Committee on the Rights of the Child, *General Comment No. 2*, para. 18.

²³⁷ UNICEF Innocenti Research Centre, *Summary Report*, p. 11.

²³⁸ UNICEF Innocenti Research Centre, *Digest No. 8*, p. 7.

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.²³⁹

iii) Awareness-Raising

Based on discussions with national children's ombudsmen in other countries, the Committee has concluded that the Children's Commissioner should have an awareness-raising role to more fully respond to Canada's obligations under article 42 of the Convention. **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 child advocacy across the country and publishes a quarterly newsletter about children's issues.²⁴⁰

As an important part of this role, the Children's Commissioner should work to ensure accessibility and visibility to children, parents, and those providing services to them across Canada. By advertising its presence and responsibilities, the Commissioner would enhance its own accessibility. This point was emphasized by all Commissioners who testified before the Committee. Like awareness, facilitated access to the Children's Commissioner is a crucial part of ensuring effective protection of children's rights. 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 is less certain.

iv) Aboriginal Affairs

Based on its discussions with the Minister of Indian and Northern Affairs, the Honourable Andy Scott, 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 these Aboriginal children's rights.** First Nations children cannot turn to the pre-existing provincial advocates because of

²³⁹ Miljeteig, p. 8.

²⁴⁰ Kiro testimony.

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.”²⁴¹

This officer should hold an influential position within the Office of the Commissioner to ensure that this dedicated role is not lost among the myriad of other issues and investigations undertaken by the Children’s 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, and who brings that sensibility to bear for the well-being of all children in New Zealand”,²⁴² but the Office of the Commissioner also ensures that particular significance is placed on the protection of Aboriginal children’s rights in the country. Dr. 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.²⁴³

v) *Liaison Role*

Provincial advocates emphasized to the Committee 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. Although working with different legislation and in different jurisdictions, these advocates can share information that may facilitate dialogue and investigations into particular and more systemic issues concerning the protection of

²⁴¹ Cindy Blackstock, Executive Director, First Nations Child and Family Caring Society of Canada, testimony before the Committee, February 7, 2005.

²⁴² *Ibid.*

²⁴³ Kiro testimony.

children's rights. These bodies could 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 can 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.²⁴⁴

vi) Involvement of Children

One of the issues that the Committee heard echoed across Canada and abroad was the primary importance of involving children. As stated by Céline Giroux, Vice President of the Commission des droits de la personne et des droits de la jeunesse of Quebec,

we have to realized 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.²⁴⁵

Minister Dryden echoed the need to hear from children in his comments to the Committee:

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

²⁴⁴ Judy Finlay, Ontario Child Advocate, testimony before the Committee, February 21, 2005.

²⁴⁵ 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*, Montreal, November 18, 2004.

does it feel like to do this? What are you most proud of? What bugs you?
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Finally, Professor Aynsley-Green, England's Children's Commissioner, emphasized to the Committee that participation can often create more momentum than rights on their own.

In response to these concerns, **the Committee strongly suggests that the Children's Commissioner have a statutory obligation to listen to and involve children.** According to article 12 of the *Convention on the Rights of the Child*, 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 fulfill 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."²⁴⁷ The Committee notes that participation is a basic political right.

However, not only should the Commissioner be mandated to involve children, the Committee notes that **such involvement should be meaningful and effective.** 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 on the Rights of the Child comments that

appearing 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.²⁴⁸

Ultimately, it is important that the voices, and not just the choices, of children are heard. Adults must not interpret the needs and wishes of children, but listen to them directly. The Committee has heard that giving children a place at the table creates an opportunity to challenge stereotypes and empower children. Paula Thomas of the Native Council of Prince Edward Island emphasized this point, telling the Committee that "I

²⁴⁶ Dryden testimony.

²⁴⁷ UN Committee on the Rights of the Child, *General Comment No. 2*, para. 16.

²⁴⁸ UN Committee on the Rights of the Child, *General Comment No. 5*, para. 12.

know that, when growing up, I never thought about politics because no one listened.”²⁴⁹
Facilitating expression often allows people to exceed all expectations.²⁵⁰ Joelle LaFargue stated 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.²⁵¹

This is particularly the case with respect to children whose voice is significantly marginalized in Canadian society. As stated by Bridget Cairns of the Association of Community Living of Prince Edward Island,

That 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. It is essential that self-advocates actually have their voices heard.²⁵²

As a result of this testimony, 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, as is the case in New Zealand. 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 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.²⁵³

The Committee believes that through these means, Canada’s Children’s Commissioner would have an opportunity to serve as a powerful catalyst for legislative, policy and attitudinal change.²⁵⁴

²⁴⁹ Paula Thomas, Chief Financial Officer, Native Council of Prince Edward Island, testimony before the Committee, June 15, 2005.

²⁵⁰ MacKay testimony.

²⁵¹ Joelle LaFargue, testimony before the Committee, June 14, 2005.

²⁵² Bridget Cairns, Director, Association of Community Living of Prince Edward Island, testimony before the Committee, June 15, 2005.

²⁵³ Marilyn McCormack, Deputy Advocate, Office of the Child and Youth Advocate, testimony before the Committee, June 13, 2005.

²⁵⁴ UNICEF Innocenti Research Centre, Digest No. 8, p. 11.

RECOMMENDATION 3

Parliament shall 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 shall report annually to Parliament.

2. Federal Interdepartmental Implementation Working Group for Children

a) The Body

In addition to the independent Children's Commissioner needed for monitoring children's rights in Canada, witnesses expressed particular concern about the fragmentation that currently exists with respect to children within the federal government. What is needed is a form of lead or coordination Ministry to ensure that children's rights do not get lost in the interdepartmental shuffle. As stated by Minister Dryden,

As we know, lives disrespect jurisdiction. They disrespect mandates and portfolios. Lives are lived wherever, and one of the challenges that any organization has, and it is certainly a challenge for government, is not to fragment our approaches. Usually that happens for good, well-intentioned reasons in circumstances where we see a problem we want to address. Then we see another problem that we want to address. What cuts across all of that is a life.²⁵⁵

Following up on the recommendations of numerous witnesses such as Suzanne Williams, Judy Finlay, Ontario's Child Advocate, and the Minister of Justice, **the Committee recommends that the federal government establish an interdepartmental implementation working group**, entrusted with ensuring the protection of children's rights across 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.

²⁵⁵ Dryden testimony.

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...²⁵⁶

The newly established implementation working group would accordingly 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 and Northern Affairs, Foreign Affairs, and the Canadian International Development Agency – in order to ensure accountability for all government actions affecting children. The 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 Ministry with the closest links to legislation touching all aspects of children's rights across Canada.

During its fact finding missions in Europe, the Committee noted that numerous countries have established similar coordinating departments 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 perspective of the child is reflected in all levels of government policy, as well as to prepare Sweden's country report to the UN Committee.²⁵⁷ England also has a cross departmental Cabinet Subcommittee on

²⁵⁶ UNICEF Innocenti Research Centre, *Summary Report*, p. 15.

²⁵⁷ Carin Jahn, Director, Child Policy, Swedish Ministry of Health and Social Affairs, testimony before the Committee, January 31, 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.

Domestic Affairs (Children's Policy) that consists of representatives from all departments that meet regularly to ensure cross-departmental implementation of the Convention in England.²⁵⁸ Judy Finlay, Ontario's Child Advocate, emphasized the need for federal leadership in this regard, stating that

we 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.²⁵⁹

b) Specific Roles of the Implementation Working Group

Witnesses recommended that the implementation working group have multiple roles of coordination and implementation; monitoring; promotion of Canada's National Plan of Action, *A Canada Fit for Children*; and of ensuring enhanced visibility for both children and children's rights.

i) Child Impact Analyses – Assessing Legislation through a Children's Rights Lens

Following up on these recommendations, the Committee believes that 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 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.²⁶⁰

Witnesses such as Professor 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

²⁵⁸ Anne Jackson, Director of Strategy, Children, Young People and Families Directorate, England's Department for Education and Skills, testimony before the Committee, October 10, 2005.

²⁵⁹ Finlay testimony.

²⁶⁰ UN Committee on the Rights of the Child, *General Comment No. 5*, para. 18.

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).²⁶¹

The Committee believes that adopting such 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”.²⁶²

ii) Ongoing Consultations

Based on criticisms of the current consultation process in Canada, the Committee believes that another **role of the implementation working group should be to carry 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 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.²⁶³

²⁶¹ *Ibid.*, para. 45.

²⁶² UNICEF Innocenti Research Centre, Innocenti Digest No. 8, p. 3.

²⁶³ The Honourable Senator Landon Pearson, UN Secretary General’s Study on Violence Against Children, North American Regional Consultations, June 4, 2005.

Witnesses emphasized that establishing the implementation working group is a necessary response to the criticisms of the Committee on the Rights of the Child concerning the Continuing Committee or any other body's ability 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.²⁶⁴

iii) 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, the Committee notes that Canada's next report under the *Convention on the Rights of the Child* is due January 11, 2009. The government should soon begin consultations for this momentous task, given that Canada's last report took approximately 3 years to develop.

Responding to the UN Committee and witnesses' concerns, **the Committee suggests that, when established, the implementation working group for children 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.

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

²⁶⁴ UN Committee on the Rights of the Child, *Concluding Observations*, paras. 10-11.

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' 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 3 years in core funding to the OHCHR to assist it in standardizing and streamlining this reporting 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 will consider reports in two parallel chambers of 9 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 allows for both in-depth exploration of individual country implementation of the Convention, and 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 Concluding Observations, to be tabled in Parliament. This response should detail the federal government's reaction and provide answers for each of the UN Committee's suggestions and recommendations.

Ultimately, the Committee echoes the words of Professor Kay Tisdall of the University of Edinburgh, who said that reporting to the UN Committee will be "an empty exercise"²⁶⁵ unless Canada puts enough effort into the entire process.

c) The Need for an Education Strategy

In addition to this focus on legislation and reporting requirements, witnesses emphasized that **the implementation working group should work towards awareness-**

²⁶⁵ Tisdall testimony.

raising, and create a “well-resourced, comprehensive national communication strategy”²⁶⁶ to ensure dissemination of information about children’s rights to children, advocates, decision-makers, professionals, front-line workers, and the public at-large. The Committee believes that this strategy should be broad in scope, and 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, as the Committee discovered that few children know about the resources and institutions available to them. 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 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.²⁶⁷

As is highlighted in the Innocenti Digest on 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.²⁶⁸

The Committee suggests that the working group also ensure wide distribution of the Convention itself, both in a child-friendly version²⁶⁹ and in many languages, to ensure that the text of the Convention is made as widely available as possible to the children and families most marginalized in Canadian society.²⁷⁰

²⁶⁶ Williams brief, p. 5.

²⁶⁷ LaFargue testimony.

²⁶⁸ UNICEF Innocenti Research Centre, Innocenti Digest No. 8, p. 1.

²⁶⁹ See CIDA’s approach to such a version in Appendix G.

²⁷⁰ UN Committee on the Rights of the Child, *General Comment No. 5*, para. 67.

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.²⁷¹

d) 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.²⁷²

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 4

An interdepartmental implementation working group for children's rights shall be established in order to coordinate activities, policies, and laws for children's rights issues.

²⁷¹ Jahn testimony.

²⁷² UNICEF Innocenti Research Centre, *Summary Report*, p. 16.

3. Strengthening the Voluntary Sector

Nearly every witness appearing before the Committee, both at home and abroad, emphasized the vital role played by the voluntary sector with respect to ensuring adequate and effective implementation of children's rights in Canada. Organizations and coalitions such as the National Children's Alliance, the Child Welfare League of Canada, the Canadian Coalition for the Rights of Children, Save the Children Canada, UNICEF Canada, and the Geneva-based NGO Group made it clear to the Committee that non-governmental organizations are ideally placed to monitor the government's use of the Convention and its application on the ground, comprising, as they do, a diversity of organizations representing a wealth of expertise, experience, and different forms of service provision.

However, these same witnesses noted that despite the increasingly important role played by NGOs in protecting children's rights in Canada and around the world, this sector is often unable to live up to the task. Significantly underfunded and seldom acting as a cohesive body towards the same goals, the voluntary sector is often unable to muster the coordination necessary to ensure effective outside monitoring of children's rights in Canada.

a) Lack of Coordination and Underfunding – The Risk to Children's Rights

The NGO Group was the first body to bring the inadequacy of the voluntary sector to the Committee's attention. Representatives from the Group emphasized that Canada has a dearth of NGOs in the children's rights sector. The problem is not necessarily the small number organizations working on children's rights, but their lack of consolidation, thus preventing systematic monitoring of children's rights.²⁷³

Witnesses cited the Coalition for the Rights of the Child as a prime example of the fact that Canadian NGOs do not lack the will to coordinate their efforts, but lack the funding to do so. A coalition comprised of non-governmental organizations from across Canada, the Coalition for the Rights of the Child is

a coalition, not an entity in itself or a stand-alone organization, and its purpose is to raise awareness about the convention... They share information about promotional materials. They received a little bit of money from [Human Resources and Skills Development] to do a variety

²⁷³ NGO Group testimony.

of workshops across Canada to get communities to look at community legislation in terms of how it affects children through the lens of children's rights... Within a variety of organizations, whether the YM-YWCA or the teachers' college, they were able to mobilize a tremendous amount of energy about the *Convention on the Rights of the Child*.²⁷⁴

And yet witnesses emphasized that this Coalition is unable to operate effectively. Even officials at Health Canada commented that the Coalition's "funding is project-based and tenuous."²⁷⁵ The Coalition's prime asset – the fact that it is a coalition – is one of the primary obstacles, as it cannot receive funds as an entity. Only its various components receive money for their various projects and mandates. The government prefers to fund technical and service organizations because they are specifically project-based, with time-limited and easier to manage funding proposals.²⁷⁶

b) The Need to Develop Capacity Building and Funding for the Voluntary Sector

Responding to these concerns, the Committee notes a need for the federal government to work with the NGO community – and in particular, the Coalition for the Rights of the Child – to develop the mechanisms and funding necessary to foster an effectively functional and cohesive voluntary sector. The Committee believes that capacity-building in the NGO community is necessary to enhance accountability and ensure real implementation of the *Convention on the Rights of the Child* in Canada.

Witnesses noted that one of the first steps in this process will be to facilitate a coordination mechanism to identify gaps in services. This point was highlighted by Leah Levac of Partners for Youth and the New Brunswick Youth Action Network:

We need to establish who holds the responsibility for some of these issues, and how we can specifically designate, because arguably when the reverse happens, we, being the voluntary sector, pop through where there is an identified need... You see this need, you want to respond to it, and this is what you do. You see this need and you cannot look at it from a bird's eye view. There needs to be a coordinated mechanism in place to respond to and identify where the service gaps are.²⁷⁷

²⁷⁴ Dawn Walker, Visiting Expert, Strategic Planning and Analysis, First Nations and Inuit Health Branch, Health Canada, testimony before the Committee, June 6, 2005.

²⁷⁵ *Ibid.*

²⁷⁶ NGO Group testimony.

²⁷⁷ Leah Levac, Program Manager, Partners for Youth, and Coordinator, New Brunswick Youth Action Network, testimony before the Committee, June 14, 2005.

The Committee notes that another key component of capacity-building is adequate funding for the NGO sector. The NGO Group and almost every other non-profit agency witness emphasized that so many organizations are doing good work, but that they are not getting the money needed.

Witnesses commented that what is needed is continuity and sustainability. Current issues come in “fads”, and if funding is only given in response to them – rather than proactively – nothing can be done to change culture and protect children’s rights in the long term.²⁷⁸ The NGO Group noted that dialogue between NGOs and the donor community is necessary so that continuity can be assured beyond the “scandal of the moment”.²⁷⁹ Such dialogue can only serve to encourage collaboration and networking to more effectively protect children as a whole.

4. Broader Issues of Funding

The question of money is also of great importance to the establishment of any new department or institution. On the basis of months of testimony, the Committee has concluded that the federal government should maximize resources dedicated to the benefit of children in order to effectively comply with its Convention obligations. The Committee notes that the requirements outlined in articles 42 (dissemination and awareness-raising) and 44(6) (dissemination of country reports) of the Convention cannot be fulfilled without the financial resources necessary to see them through. As well, neither the implementation working group nor the Children’s Commissioner will be able to operate effectively without adequate funding for their consultations, education campaigns, investigations, and other roles.

Consequently, the Committee suggests that the federal government establish a mechanism to provide adequate funding for effective implementation of Canada’s international human rights treaties, and the *Convention on the Rights of the Child* in particular. This funding should be put towards ensuring the effective implementation of the recommendations concerning the implementation working group, the Children’s Commissioner, as well as pre- and post-ratification

²⁷⁸ Representatives from Children in Scotland also noted this issue in the Scottish context during testimony before the Committee, October 12, 2005.

²⁷⁹ NGO Group testimony.

consultations and mechanisms with respect to the incorporation of all international human rights treaties in Canada.

D. CONCLUSIONS

This Committee's mandate was to examine and report upon Canada's international obligations with respect to the rights and freedoms of children – in particular, the Committee concentrated on national obligations under the *Convention on the Rights of the Child*, and whether Canada's law, policy and practice can be said to comply with those requirements. Key to this process was a focus on implementation. Based on the comments and criticisms of the Committee on the Rights of the Child, as well as months of hearings in Canada and abroad, the Committee has come to the realization that there can be no full compliance, and consequently, no real and comprehensive protection of children's rights without effective implementation. Responding to concerns expressed throughout its hearings, the Committee attempted to address "the gulf between the rights rhetoric and the realities of children's lives"²⁸⁰ through this Interim Report.

The Committee framed its 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. Rather than focussing on the necessity of protecting and responding to specific needs, the Committee approached its study through a more sustainable lens to find solutions that would ensure respect for children's rights at a more holistic level throughout Canadian society. This led to the recommendation for an interdepartmental implementation working group to coordinate implementation of the Convention throughout the federal government, as well as the establishment of a monitoring mechanism to ensure effective implementation of those rights, and government accountability, through Parliament, to the public as a whole, and to children in particular. Throughout its recommendations, the Committee highlighted the absolute necessity of facilitating child involvement in all mechanisms affecting their rights. The voices, not simply the choices, of children must be heard at a national level.

²⁸⁰ UNICEF Innocenti Research Centre, Digest No. 8, p. 4.

Beyond the issue of children's rights, this study further emphasized the 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 only by bolstering the effectiveness and accountability of its ratification process can Canada truly claim to remain a 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.

CHAPTER SIX – FUTURE PLANS: THE FINAL REPORT

In future months, the Committee will continue to study the issue of children's rights and Canada's obligations, focusing on specific issues that have been signalled as issues of concern to date, for example: the medically fragile, the disabled, Aboriginal children, migrant children, minority children, sexually exploited children, children in conflict, and those caught in the child welfare or youth criminal justice systems. In continuing its in-depth examination of these issues, the Committee will attempt to respond to concerns that it has 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. The final Report will be tabled by March 31, 2006.

A brief outline of the issues that the Committee expects to study as a result of the concerns raised by the Committee on the Rights of the Child and other witnesses during the Committee's hearings is as follows:

A. HEALTH

Health is a significant issue in the children's rights protection framework. Issues brought before the Committee included:

- There is no national standard of services and treatment programs provided to children with autism. After a cut-off age that varies between provinces, parents are often left to cover the costs – a situation which results in children being denied therapy.²⁸¹
- Doctors are quick to diagnose Attention Deficit Hyperactivity Disorder and prescribe drugs to agitated children rather than looking into alternatives to medical diagnosis of such behaviour.²⁸²
- Obesity in children is on the rise, due to the fact that too many children are not getting the physical activity or proper nutrition required of a healthy lifestyle.²⁸³
- Disabled children are a particularly marginalized segment of the Canadian population whose voices are not heard and whose needs are inadequately met by governments across Canada.²⁸⁴

²⁸¹ Peter Dudding, Executive Director, Child Welfare League of Canada, testimony before the Committee, February 14, 2005; Richard testimony; Michele Pineau, Association for Community Living for Prince Edward Island, testimony before the Committee, June 16, 2005.

²⁸² Richard testimony.

²⁸³ The Honourable Carolyn Bennett, Minister of State (Public Health), testimony before the Committee, May 16, 2005; Lynn Vivian-Book, Assistant Deputy Minister, Newfoundland and Labrador Department of Health and Community Services, testimony before the Committee, June 13, 2005; Levac testimony.

B. ABORIGINAL CHILDREN

Many issues were raised with respect to Aboriginal children and youth in Canada.

- The aftershock effects of Canadian history are still apparent and it is imperative that policy makers devote significant attention to improving the lives and well-being of these particularly marginalized children.²⁸⁵
- Aboriginal children are significantly overrepresented in the child welfare and youth criminal justice systems. Adding to problems in this regard is the fact that many non-Aboriginal social and other front-line workers are not trained to understand Aboriginal language and culture, resulting in the further marginalization of the children in their care.²⁸⁶
- Aboriginal children face elevated poverty rates. This situation is not improved by the fact that the government does not work to ensure the provision of adequate funds, services, and proper housing to Aboriginal communities.²⁸⁷
- The suicide and diabetes rates among Aboriginal youth in Canada are among of the highest in the world.²⁸⁸
- Aboriginal children living off reserve or without status are provided with fewer resources, programs, and services than their on-reserve, status counterparts.²⁸⁹
- The language and culture of Aboriginal children have been eroded on and off-reserves across Canada.²⁹⁰

C. MINORITY CHILDREN

The issue of minority children is one of great significance to the children's rights framework. Issues brought before the Committee included:

- Concern about the lack of data, and the resulting knowledge gap with respect to vulnerable children, including visible minorities.²⁹¹
- The varying caliber and provision of health care and other services provided to minority communities.²⁹²
- Some minority groups have access to specialized education, while others are denied such rights.²⁹³

²⁸⁴ Douglas McMillan, Professor of Pediatrics, IWK Health Centre, testimony before the Committee June 16, 2005.

²⁸⁵ Blackstock testimony.

²⁸⁶ Blackstock, testimony; Finlay testimony; Jamie Gallant, President and Chief, Native Council of Prince Edward Island, testimony before the Committee, June 15, 2005.

²⁸⁷ Yalden testimony; Committee on the Rights of the Child, *Concluding Observations*, para. 54.

²⁸⁸ Committee on the Rights of the Child, *Concluding Observations*, para. 36.

²⁸⁹ Gallant, testimony.

²⁹⁰ *Ibid.*

²⁹¹ Covell testimony.

²⁹² Richard testimony; Pineau testimony.

²⁹³ Yalden testimony.

D. MIGRANT CHILDREN

Children fleeing root causes of migration, such as war, sexual exploitation, and persecution, arrive at Canada's borders regularly – both with and without their families.

Witnesses appearing before the Committee expressed concern that:

- Migrant children face a number of obstacles to settlement and integration into their new homeland, too often slipping through cracks in service provision and education.²⁹⁴
- Separated children – those arriving unaccompanied at the border – need to be identified as children in need of protection. Unfortunately, the age until which children can be treated as children in need of protection varies in each province. These variances have meant that service providers must apply different standards of protection to children arriving at different ports of entry into Canada.²⁹⁵
- Canada and its media are becoming increasingly aware of the problem of trafficking in children, both in Canada and around the world. Through the *Immigration and Refugee Protection Act*,²⁹⁶ as well as the federal government's proposed amendments to the *Criminal Code* to deal with trafficking in persons,²⁹⁷ the government is beginning to underscore the extent of the problem and the need to deal with it effectively.
- Particular sensitivity is needed in the case of refugee children arriving in Canada, either with or without their families. Immigration officials are often unable to deal with the particular sensitivities of such children and the refugee protection criteria that may be used to facilitate their entry.²⁹⁸
- Immigration officials are often untrained in how to assess the best interests of the child, including the consideration of legal, psychological, emotional and other factors at play in the lives of children arriving either alone or accompanied at the border.²⁹⁹

E. SEXUALLY EXPLOITED CHILDREN

The sexual exploitation of children is an unresolved issue in Canada, ranging from issues related to trafficking in children to sexual exploitation over the internet.

Witnesses appearing before the Committee expressed concern that:

- The sexual exploitation of children through prostitution is a significant issue in Canada given the large numbers of children and youth living on the street. Many

²⁹⁴ Agnes Casselman, Executive Director, International Social Service, Canada, testimony before the Committee, March 7, 2005; Jahanshah Assadi, United Nations High Commissioner for Refugees, Representative in Canada, testimony before the Committee, May 2, 2005.

²⁹⁵ Committee on the Rights of the Child, *Concluding Observations*, para. 46; Casselman testimony; Assadi testimony.

²⁹⁶ S.C. 2001, c. 27.

²⁹⁷ Bill C-49, *An Act to amend the Criminal Code (Trafficking in Persons)*, received third reading in the House of Commons on October 17, 2005, and second reading in the Senate on October 25, 2005.

²⁹⁸ Assadi testimony.

²⁹⁹ Assadi testimony.

attempts have been made by the federal government and provinces to deal with the commercial sexual exploitation of youth, including amendments to the *Criminal Code* ensuring harsher penalties for those who exploit children, and Alberta's *Protection of Children Involved in Prostitution Act*³⁰⁰ which allows authorities to detain a child suspected of being in need of protection due to involvement in prostitution.

- Exploitation of children over the internet has become an issue of grave concern in this digital age. Law enforcement agencies are taking on an active role in combating this crime, including the establishment of tiplines to facilitate reporting.
- The internet has also led to increasing concerns about possession and distribution of child pornography.
- Bill C-2, *An Act to Amend the Criminal Code (Protection of Children and Other Vulnerable Persons) and the Canada Evidence Act*,³⁰¹ received Royal Assent on July 20, 2005, but has not yet come into force. This series of amendments strengthens provisions dealing with sexual exploitation of children, facilitates child victim testimony, strengthens child pornography provisions, and creates a new voyeurism offence.
- Trafficking in children for the purposes of sexual exploitation is also an issue of significant concern, whether with or without movement across borders. Through the *Immigration and Refugee Protection Act*, as well as the federal government's proposed amendments to the *Criminal Code* to deal with trafficking in persons, the government is beginning to underscore the extent of the problem and the need to deal with it effectively.

F. CHILDREN IN CONFLICT

Children in conflict are an issue of significant concern within the children's rights framework. Issues brought before the Committee included:

- There is a concern that the security and rights of children threatened by armed conflict are not a top priority, and that a weak human rights system and the UN system have failed to effectively protect children from the most egregious abuses during long periods of armed conflict.³⁰²
- Although Canada has ratified the *Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflicts*, Canada was required to explain itself pursuant to article 3 of this Optional Protocol, as Canada permits voluntary recruitment into the Canadian Armed Forces from the age of 16 years. This age is lower than in many other countries.
- Concern about the challenge of ensuring cultural continuity and participation in situations of armed conflict.³⁰³

³⁰⁰ R.S.A. 2000, c. P-28.

³⁰¹ R.S. 2005, c. 32.

³⁰² Vandergrift testimony.

³⁰³ The Honourable Elizabeth Hubley, Senator of Prince Edward Island, testimony before the Committee, June 15, 2005.

G. CHILD PROTECTION

While child protection legislation is under provincial jurisdiction, it is one that lies at the heart of the *Convention on the Rights of the Child* and is essential to the Committee's understanding of children's rights in Canada. Witnesses appearing before the Committee expressed concern that:

- Statistics show that children are particularly vulnerable to risks of assault, sexual abuse, physical abuse and neglect. These experiences are often perpetrated by individuals whom the child knows and trusts.³⁰⁴
- Canada lacks a uniform definition of what constitutes a child in need of protection. Current provincial legislation is not consistent, with some provinces only providing protection until the age of 16, while in others, protection is available until the age of 19 (for example, in British Columbia).
- There is frequent overlap between the youth criminal justice system and the child welfare system.³⁰⁵
- Service provision works best when provided on a case-by-case basis, and in a non-intrusive, culturally sensitive manner. Not all children in need of protection require the same care – some may need counselling, others a home, or proper medical treatment. Proper identification of these different needs is essential to creating a viable child protection system that operates on behalf of children, rather than parents or the state.
- Aboriginal children are significantly overrepresented in the child welfare system. Many non-Aboriginal social workers are not trained to understand Aboriginal languages and cultures, resulting in the further marginalization of the children in their care.³⁰⁶

H. YOUTH CRIMINAL JUSTICE

Despite changes to legislation, the youth criminal justice system continues to be a focus of public concern. Witnesses appearing before the Committee expressed concern that:

- There is frequent overlap between the youth criminal justice and the child welfare systems.
- Aboriginal children are significantly overrepresented in the youth criminal justice system, often crossing into it after involvement with the child welfare system.³⁰⁷
- Although Canada has numerous important reasons for its reservation to article 37(c) of the *Convention on the Rights of the Child*,³⁰⁸ youth and adult offenders

³⁰⁴ Covell testimony.

³⁰⁵ Leuprecht testimony.

³⁰⁶ Gallant testimony.

³⁰⁷ Finlay testimony.

³⁰⁸ Article 37(c) of the Convention requires States Parties to detain young offenders in separate facilities from adult offenders.

have in the past been housed in the same facility in order to satisfy practical concerns such as overcrowding.

I. CORPORAL PUNISHMENT

The debate concerning corporal punishment and children in Canada appears to have taken on new dimensions in recent years. At one end of the spectrum, advocates demand that the government deem section 43 of the *Criminal Code* unconstitutional, leading to an absolute ban of corporal punishment. At the opposite end, others argue that section 43 should be retained to protect parental and family autonomy. Witnesses appearing before the Committee expressed concern that:

- The harms caused by corporal punishment of children can be serious, leading to trauma; loss of trust in parents; poor relationships between parent and child; behavioural problems, including violence by the child to others; and physical harm.
- There is a fine line between corporal punishment and physical abuse. To address this, the Supreme Court of Canada in *Canadian Foundation for Children, Youth, and the Law v. Canada (A.G.)*³⁰⁹ emphasized the limitations to defensible corporal punishment, pursuant to section 43 of the *Criminal Code*.
- Bill S-21, *An Act to Amend the Criminal Code (Protection of Children)*, which received second reading in the Senate on March 10, 2005 and is currently under consideration by the Standing Senate Committee on Legal and Constitutional Affairs, proposes repeal of section 43 of the *Criminal Code*.
- Education is a key factor in limiting corporal punishment through programs to teach the public about alternate methods of discipline, with a focus on the merits of positive discipline, as well as the harms of physical discipline.

³⁰⁹ [2004] 1 S.C.R. 76.

APPENDIX A : List of Witnesses

WITNESSES

Fact Finding Mission to London, Edinburgh and Oslo, October 7 to 15, 2005

October 10, 2005

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

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

Scottish Executive

Steven Kerr, US and Canada Policy, International
Division

October 14, 2005

Canadian Embassy - Oslo

S.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
Petter Wille, Deputy Director General, Global
Section

Office of the Ombudsman

Reidar Hjermann, 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

Public Hearings in Canada

September 26, 2005

The Honourable Ken Dryden, P.C., M.P.
Minister of Social Development Canada
The Honourable Andy Scott, P.C., M.P.
Minister of Indian and Northern Affairs
Canada

University of Manitoba:

Anne McGillivray, Professor

University of Alberta:

Joanna Harrington, Professor

Social Development Canada:

Sonia L'Heureux, Director General, Early
Learning and Child Care Direction
John Connolly, Acting Director, Community
Development and Partnerships Directorate,
Partnerships Division
Deborah Tunis, Director General, Policy and
Strategic Direction

**Department of Indian and Northern
Affairs Canada:**

Dan Hughes, Senior Advisor, Treaties,
Research, International and Gender Equality
Branch
Havelin Anand, Director General, Social
Policy and Programs Branch

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

Government of Nova Scotia

Family and Children's Services:
George Savoury, Senior Director

Department of Education:
Ann Power, Director, Student Services
Division
Don Glover, Consultant, Student Services
Division

Department of Justice:
Fred Honsberger, Executive Director,
Correctional Services

Department of Health:
Linda Smith, Executive Director, Mental
Health, Child Health and Addiction
Treatment Services

June 15, 2005

Government of Prince Edward Island

**Department of Health and Social
Services, Children's Secretariat:**
Cathy McCormack, Early Childhood
Education Consultant
Janice Ployer, Healthy Child Development
Coordinator

Department of Education:
Carolyn Simpson, Provincial Kindergarten
Program Administrator

The Senate of Canada:
The Honourable Elizabeth Hubley, Senator
of Prince Edward Island

Native Council of Prince Edward Island:
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 Cairns, 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

Partners for Youth:

Leah Levac, Program Manager and
Coordinator of the New Brunswick Youth
Action Network

Government of New Brunswick

**Department of Family and Community
Services:**

Bill MacKenzie, Director Policy and
Federal/Provincial Relations

Department of Public Safety:

Ian Walsh, Senior Policy Advisor
Jay Clifford, Manager Policy and Planning

Department of Education:

Inga Boehler, Assistant Director of Policy
and Planning

Department of Justice:

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

**Government of Newfoundland and
Labrador**

**Department of Health and Community
Services:**

Lynn Vivian-Book, Assistant Deputy
Minister

Department of Justice:

Mary Mandville, Civil Solicitor

Child, Youth and Family Services:

Ivy Burt, Provincial Director

**Center for Excellence for Youth
Engagement:**

Florian Bizindavyi, Coordinator

June 6, 2005

The Honourable Ujjal Dosanjh, P.C., M.P.,
Minister of Health

The Honourable Joe Volpe, P.C., M.P.,
Minister of Citizenship and Immigration

Health Canada:

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 Adviser, Strategic,
Planning and Analysis, First Nations and
Inuit Health Branch

- Citizenship and Immigration Canada:**
Daniel Jean, Assistant Deputy Minister,
Policy and Program Development
Brian Grant, Director General, Strategic
Policy and Partnerships
- May 30, 2005**
- Government of New Zealand:**
Cindy Kiro, Children’s Commissioner of
New Zealand
- May 16, 2005**
- The Honourable Carolyn Bennett, P.C.,
M.P., Minister of State (Public Health)
- Health Canada:**
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

The Honourable Irwin Cotler, P.C., M.P.,
Minister of Justice

Department of Justice:

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

Fact Finding Mission to Geneva and Stockholm, January 25 to February 1st, 2005

January 27, 2005

**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

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-Côte
Hélène Sakstein

January 31, 2005

Canadian Embassy - Stockholm

S.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.

Rigmore 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

Public Hearings in Canada

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 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

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.

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 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

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.
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 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.

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 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 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**

**Optional Protocol to the Convention on the Rights of the Child 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**

**Optional Protocol to the Convention on the Rights of the Child on the
involvement
of children in armed conflicts**

**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 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 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.

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



Convention 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;

- (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).

APPENDIX F: A Canada Fit for Children: Canada's Plan of Action

A CANADA FIT FOR CHILDREN

Canada's follow-up to the United Nations General Assembly Special Session on Children, dated April 2004.

A message from the Prime Minister

The children of today constitute the largest generation of young people the world has ever known. And the world will be profoundly affected by their actions and decisions – not only in the years to come, but even right now.

Their dreams and aspirations, their energies and talent, will enormously shape the world we live in. It is absolutely in the interest of all people of the globe that the children of today grow up and develop in conditions of safety and security; and that they are nurtured and supported by their families and communities. And that means protecting them from deprivation, from want, from fear and injury – physical or emotional.

Upholding the rights, the innocence and the promise of our children is a key responsibility that all countries, all families, all communities share.

In Canada, the Government has devoted more than \$13 billion to the National Children's Agenda. Most recently, as part of our ongoing efforts to strengthen Canada's social foundations, the Government has established a Canada Learning Bond to help children with their later education needs; we have accelerated the funding under the Multilateral Framework on Early Learning and Child Care which means more quality child care more quickly.

I would urge everyone who reads A Canada Fit for Children to become engaged in its primary goal: to work together on all levels – at the national level, at the individual and community level – to construct a world in which our children can live, learn, develop as far as their potential and dreams will take them.

I congratulate all those who have participated in the development of A Canada Fit for Children.

The Right Honourable Paul Martin
Prime Minister of Canada

A message from the Minister of Health and the Minister of Social Development

Supporting children and families is a national priority. In Canada, we know the value of ensuring that children receive the best possible start in life. We recognize the importance of ensuring they receive the supports they need in all areas of their life so that they can become responsible citizens of our country. We also know there is a need to support other countries in an effort to improve the health and well-being of children around the world.

Following the United Nations Special Session on Children in May, 2002, Canada committed to respond with a plan of action. As the Ministers responsible for the development of A Canada Fit for Children, we are aware that while most children in Canada are doing well, some challenges remain. In order to address these challenges in a collaborative manner, consultations with a broad range of Canadians were held across the country. A Canada Fit for Children reflects the consensus on the priorities identified during the consultations and identifies opportunities for concrete action that Canadians can take to improve the lives of children in Canada and around the globe.

We encourage everyone to read A Canada Fit for Children and to consider the contributions they can make to realize the broad goals set out in the document. No one government, organization, individual, family or community acting alone can improve the lives of our children. Working in collaboration will be essential to our success.

We would like to take this opportunity to express our sincere appreciation to the Canadians who contributed to Canada's Plan of Action. In particular, we'd like to recognize the Honourable Senator Landon Pearson for her tireless efforts on behalf of children, and in particular, for her leadership in developing A Canada Fit for Children.

Pierre Pettigrew Liza Frulla
Minister of Health Minister of Social Development
Minister of Intergovernmental Affairs and,
Minister responsible for Official Language

A message from Senator Landon Pearson

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."

A Canada Fit for Children is Canada's plan of action to construct such a world. Canadians of all ages and from every sector of society have contributed their thoughts and ideas to its design. Supporting families and strengthening communities became a central theme as all of us worked together to create a cohesive strategy for improving the situation of Canada's and the world's children.

We want this document to make a real difference so we urge everyone who reads it to become engaged. We know that in Canada, in spite of the fact that the majority of children in this country are doing well, many problems remain. As for the world's children, the obstacles confronting them often seem insurmountable. Yet there is much reason for hope. I believe that as Canadians we can be proud of the common vision that has informed A Canada Fit for Children and optimistic that it will light our way forward to a better future for us all.

Senator Landon Pearson

A message from the young people of CEERT

Through our involvement in the process of developing A Canada Fit for Children, children and young people have been engaged in the rewarding and exceptional process of entrenching children's rights into Canadian society to bridge the gap between goals and realities.

The Special Session on Children set an historic precedent in May 2002 by actively involving young people in a meeting of the General Assembly. The Government of Canada led the way by bringing young people as official delegates to the regional and preparatory committee meetings for the special session held in Jamaica and New York.

Five young Canadian delegates who had attended the international meetings reunited in August 2002 and created the Child Engagement Experts Resource Team (CEERT). We, the young people of CEERT, have been involved with the development of A Canada Fit for Children. Children and young people across Canada have contributed their vision of what a Canada fit for children needs to look like. We have spoken as equals alongside adult counterparts who have embraced our desire and our right to participate.

The future of Canada must be shaped from its greatest asset – the children and young people of today. We have valid and unique concerns, dreams and voices. We are in possession of unparalleled views of our realities through daily experiences.

We can declare with pride that Canada's renowned commitment to children continues with the promotion of children's rights, from the adoption and ratification of the Convention on the Rights of the Child to the support of the creation of CEERT. However, the drive for children's rights has been and must be enforced through involvement and investment.

The implementation of A Canada Fit for Children will directly impact our futures and the nation's future. The end result will be determined by the participation of children, facilitated by organizations and groups such as CEERT, working alongside decision-makers at all levels of society. With each promise and act, we bring ourselves one step closer to the dream: a community—, a province—, a city—, a country—, and even a world, fit for children – fit for all of us!

Alison B. — Amy R. — Candis C. — Ellen K — Giselle R.
Lisa W. — Myron W. — Nikki S. — Rebecca D. — Jacqui P.

The young people of the Child Engagement Experts Resource Team steering committee

A CANADA FIT FOR CHILDREN

I. PREFACE

1. In May 2002, more than 7,000 people from around the world gathered in New York to take part in the United Nations General Assembly Special Session on Children, the most important international meeting on children to be held in more than ten years. The Special Session on Children was attended by heads of state and government and other high-level delegates, as well as representatives of non-governmental organizations and hundreds of boys and girls aged nine to 18. It was an opportunity for governments to join with civil society to review progress since the World Summit for Children in 1990, identify emerging issues and renew the commitment of the international community to the world's children.
2. The Special Session on Children ended with the nations of the world adopting by unanimity a declaration and plan of action called A World Fit for Children. Issuing from three years of intense negotiations, A World Fit for Children represents a remarkable worldwide consensus about strategies and actions to improve the situation of all children everywhere. A World Fit for Children identifies four priority areas for action: promoting healthy lives; providing quality education; protecting children against abuse, exploitation and violence; and combating HIV/AIDS. It contains a global plan of action, based on the best interests of the child, that describes what the nations of the world should do for and with children. All governments present at the special session committed to move forward and each agreed to prepare a national plan of action based on its own national circumstances.
3. A Canada Fit for Children, Canada's national plan of action, has been developed with Canadians from every sector of society and all levels of government, as well as children. It reflects what Canadians told us were the key issues affecting children and suggests opportunities for action that can be taken to improve the lives of children in Canada and in the world. It lays out a roadmap to guide Canada's collective efforts for and with children. As one element of the monitoring of progress and results, it includes examples of directional signposts and milestones for the Government of Canada. It calls for strategies that are child-centred, multi-sectoral, forward-looking and collaborative. It also signals emerging issues and identifies ways to promote and protect children's rights, including greater public awareness of the United Nations Convention on the Rights of the Child.
4. A Canada Fit for Children contains a declaration of Canada's commitment to children, a Canadian vision for children that highlights Canadian governments' strong agenda for children, and a plan of action that reflects a consensus on goals, strategies and opportunities for action on key priorities within four central themes: supporting families and strengthening communities; promoting healthy lives; protecting from harm; and promoting education and learning.
5. In this Plan of Action, 'we' seeks to include everyone in Canada who cares about or is responsible for children, as well as children themselves; and 'child', following the definition in the Convention on the Rights of the Child, means every human being under the age of 18 years.

II. DECLARATION

6. A country that believes in the future values its children. Canada is a forward-looking nation with a strong sense of responsibility. We believe that children should have the opportunity to be fully prepared to live a responsible life in a free society, in a spirit of understanding, peace, dignity, tolerance, equality and solidarity.
7. To recognize the significance of childhood and the important role children have in society, Canada's action plan reaffirms our commitment to respect the rights and ensure the well-being of all children in order to achieve a Canada and a world fit for children. Canada is committed to continuing to work to improve the life chances of children in all parts of the world through the promotion of peace, security and prosperity as well as universal education, guided in our efforts by the values Canadians cherish of respect for democracy, human rights, the rule of law, equality, diversity and the protection of the environment.
8. We are proud of our diversity in Canada. Our population is spread across a vast northern land whose regions are marked by linguistic, economic and demographic differences. According to Statistics Canada, in 2001 Canada's children comprised 24 percent of the country's population with nearly seven million under the age of 18, including just over 380 thousand Aboriginal children and 1.1 million visible minority children (of whom 30 percent were immigrants or non-permanent residents). We have large rural areas and densely populated urban centres. We share the longest undefended border in the world with a powerful southern neighbour. We are a multi-cultural, multi-ethnic, multi-racial and multi-faith society. We see ourselves as tolerant, inclusive and modern and acknowledge that our children are growing up in an increasing variety of family arrangements.
9. We take pride in our democratic traditions and our personal and political freedoms, as guaranteed by Canada's Constitution and the Canadian Charter of Rights and Freedoms and protected by legislation, government policies and programs. Canada is a federation comprising ten provinces and three northern territories and our Constitution provides unique roles and responsibilities for federal, provincial and territorial jurisdictions. While each level of

government has jurisdiction over certain subject matters, Canada is committed to a structure of co-operative federalism based on continuous dialogue. Within the federation, one province, Québec, has been recognized by the Parliament of Canada as a distinct society owing to its French-speaking majority, unique culture and civil law tradition. Canada has two official languages, English and French, and linguistic duality is part of our collective identity as Canadians. The rights of Aboriginal peoples in Canada are guaranteed under the Constitution, which recognizes three groups of Aboriginal peoples – Indians, Métis and Inuit – with unique heritages, languages, cultural practices and spiritual beliefs.

10. Parents (and legal guardians where designated) in Canada have the primary responsibility for the care and nurture of their children. The role of government and society with respect to children is to provide the legislative and policy framework, the institutional and organizational structures, the fiscal and other supports and services to enable families to ensure their children's healthy development. However, if families are unable to care for their children, then governments and society have a responsibility to provide support and ensure that they are cared for and protected. In Canada, we also recognize that children themselves have important contributions to make to the decisions that affect their own development, as well as that of their communities.
11. We affirm our obligation to promote and protect the human rights of all children. Canada is a State Party to the Convention on the Rights of the Child, the most universally embraced human rights treaty in history. In Canada, the Convention on the Rights of the Child has become the main instrument of reference, the essential basis for the achievement of children's rights. Canada's commitments to children are consistent with the four guiding principles of the Convention: the best interests of the child; survival and development; participation; and non-discrimination. The rights of the child, like all human rights, are universal, indivisible, interdependent and interrelated.
12. Each of us can make a difference in the life of a child. So let us all commit to working together to build a Canada and a world fit for children – a world in which children are loved and respected, and where every boy and girl is able to enjoy childhood and grow up healthy, in dignity and peace.

III. TOWARD A COMMON CANADIAN VISION FOR CHILDREN

13. By taking a leading role at the World Summit for Children in 1990 and ratifying the Convention on the Rights of the Child in 1991, Canada affirmed the inherent dignity and the equal and inalienable rights of all members of the human family, including children, as the necessary foundation for freedom, justice and peace in the world. Since then, Canadians have been constructing a common vision for children in Canada and in the world to reflect the priority we have accorded them.
14. After the World Summit for Children, Canada prepared and submitted to the United Nations a national plan of action for children entitled Brighter Futures. In 1993, by Act of Parliament, Canada designated November 20 as National Child Day, a day to celebrate children in Canada and promote awareness of the Convention on the Rights of the Child. Canada has presented two periodic reports to the United Nations Committee on the Rights of the Child with respect to our implementation of the Convention. Canada played an important role in the preparations for the 2002 United Nations General Assembly Special Session on Children – the follow-up meeting to the World Summit on Children – including during the negotiations for the global declaration and plan of action, A World Fit for Children. Canada was an active and recognized presence at the special session itself, and we are particularly proud of our support for the participation of children throughout the process.
15. In December 1997, Canada was the first country to ratify the Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on their Destruction (the Landmines Convention). In June 2000, we were the first to adopt comprehensive legislation to implement the Rome Statute of the International Criminal Court to bring individuals to account for crimes against humanity, including children. In July 2000, we were the first country to ratify the Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflicts. In September 2000, Canada hosted a groundbreaking international conference on war-affected children.
16. Canada's on-going commitment to children and our implementation of the Convention on the Rights of the Child have inspired us to act on their behalf. Our combined efforts, both in Canada and internationally, have increased our knowledge of the factors that promote the well-being of children and their families and contributed to our understanding of the relationship between the rights of the child and child development.
(1) Children's well-being in Canada: A shared responsibility
17. The well-being of children is a shared responsibility in Canadian society. While parents play the primary role in the nurture and care of their children, we recognize that families operate within the context of communities, workplaces and public institutions. The role of governments is to ensure that each of these settings function, individually and together, in ways that support families with children and children within families.
18. Under Canada's Constitution, federal, provincial and territorial governments are responsible for many areas that touch on the lives of children. It is clear that if children are to benefit cooperation among jurisdictions is essential. Federal, provincial and territorial cooperation with respect to children has been significantly enhanced over the past decade. In 1996, First Ministers established the well-being of children and families as a priority for joint action.

19. The National Children's Agenda, developed by the federal, provincial and territorial governments in consultation with the public, sets out a shared vision for ensuring that children in Canada have the best possible start in life and the necessary opportunities to realize their full potential. This shared vision includes four goals, for children to be: healthy (physically and emotionally); safe and secure; successful at learning; and socially engaged and responsible. The National Children's Agenda also identifies six potential areas for collaborative action to improve the well-being of children in Canada: enhancing early child development; supporting parents and strengthening families; improving income security for families; providing early and continuous learning experiences; promoting healthy adolescent development; and creating safe, supportive and violence-free communities. The Early Childhood Development Agreement announced by First Ministers in September 2000 was the first item to be brought forward on this agenda. Under the Agreement, investments are being made in programs and services specifically for children under six years of age and their families in four areas for action: promoting healthy pregnancy; birth and infancy; improving parenting and family supports; strengthening early childhood development, learning and care; and strengthening community supports.
- 2) How children in Canada are doing
20. For the most part, children in Canada are doing well. They have access to universal health and education systems that are among the best in the world. The majority of them are born healthy and remain so. They live in caring and nurturing families and supportive community environments. The prevalence of low-income families is lower now than at any other time during the last ten years. Children enter school ready to learn and, once there, succeed. But not all children in Canada are thriving. Aboriginal children, children with disabilities, children living in remote communities, children of single parent families, children in the welfare system, children of recent immigrants and refugee children are more likely to experience economic disadvantage with its associated risks. We also recognize that all children in Canada are potentially vulnerable at one time or another to a range of threats to their health and well-being.
21. The Government of Canada has identified population health, the maintenance and improvement of the health of the entire population and the reduction of inequities in health status among groups within the population, as the best approach for program and policy development. The population health approach extends beyond traditional health status indicators (such as illness, disability and disease) and considers the entire range of individual and collective factors and conditions – and their interactions – that have been shown to be correlated with health status. Commonly referred to as the “determinants of health,” these factors currently include: income and social status; social support networks; education; employment/working conditions; social environments; physical environments; personal health practices and coping skills; healthy child development; biology and genetic endowment; health services; gender; and culture.
22. We have learned from our accumulated body of research and knowledge about children that three enabling conditions are key to healthy child development: adequate income for families with children; effective parenting within strong and cohesive families; and supportive and inclusive communities.
23. Families need to be able to provide financially for their children – not only to meet basic needs such as food, clothing and shelter, but also to offer their children the enriching experiences that nurture their talents and encourage them to engage with their peers in the healthy and stimulating activities that promote their social development and inclusion in community life. A number of factors, however, may affect the ability of families to attain financial security: lack of affordable housing; lack of access to child care; chronic health problems; low levels of parental education; and a limited job market. Ensuring that at least one parent has steady adequately paid work is clearly the most effective way to prevent and reduce poverty. However, in 2001, the unemployment rate in Canada hovered around 7.2 percent and the incidence of low income among families with children was 11.4 percent as measured by Statistics Canada's post-income tax Low-Income Cut-Offs (LICOs) that are set according to the proportion of annual income spent on basic needs, including food, shelter and clothing. The LICO indicates those families that spend a much higher share of their income on basic needs than the average family.
24. We all recognize the importance of good parenting for child development. Children will be less vulnerable to poor learning and behavioural outcomes if their parents are supportive, responsive, and consistent. We also know that, while today's parents may be under stress, they are committed to raising their children well. Furthermore, the research tells us that effective parenting can protect children from many of the risks associated with low socio-economic status, while ineffective parenting may undermine the benefits afforded by socio-economic advantage and result in poor developmental outcomes.
25. Supportive workplaces with family-friendly policies and practices, community resources and social networks all help parents to be more effective and children to do well. Communities that are safe and secure, that provide healthy and stimulating environments, and that ensure access to programs and services make a significant contribution to the well-being of children and their families. Early learning and child care opportunities that are sensitive to language and culture are particularly important to prepare children for lifelong learning.
- (3) Supporting children and their families in Canada
26. The Government of Canada in partnership with provinces, territories and other stakeholders has made many significant investments over the past decade to ensure that families have adequate income, parents are able to fulfil their responsibilities effectively and that children have access to community programs and services that foster their healthy development.
27. Canada's recent record on economic growth and job creation has helped to reduce poverty and ensure that more families have the resources they need to care for their children. In addition, the Canada Child Tax Benefit, repeatedly enhanced since its introduction in 1997, provides a tax-free monthly payment to help families with the cost of raising their children. Under the National Child Benefit (NCB) – a joint initiative with the provinces and territories introduced

in 1998 – the Government of Canada provides income benefits for low-income families to reduce the depth of child poverty and promote parents' attachment to the workforce. As their contribution to the NCB initiative, provinces, territories and First Nations reinvest in benefits and services to support low-income families with children in areas such as child care, child benefits and income supplements, early childhood services, supplementary health benefits including dental benefits and other preventative services. Other measures that assist families with children include the Goods and Services / Harmonized Sales Tax Credit, the Child Care Expense Deduction, the Canada Education Savings Grant program, the Canada Student Loan Program and the Education Tax Credit.

28. In recognition of the extraordinary costs faced by the families of children with severe disabilities, the Government of Canada has enhanced a number of tax measures and programs, including the Disability Tax Credit and Supplement, the Medical Expenses Tax Credit, the Child Care Expense Deduction for children with disabilities, the Registered Retirement Program/Registered Retirement Income Fund Rollovers for an Infirm Child, Canada Study Grants for Students with Disabilities and introduced a new Child Disability Benefit for low and modest income families in 2003.
29. The Government of Canada has introduced a range of measures to provide other supports to parents as their children's primary caregivers. In 2000, maternity and parental benefits offered under the Employment Insurance program were extended for up to one year to allow parents to stay at home and care for their newborn or newly adopted child. Under the Early Childhood Development Agreement, the Government of Canada is transferring funds each year to provincial and territorial governments to improve and expand early childhood development programs and services. In 2003, the Government of Canada committed to improve access to affordable, quality, provincially/territorially regulated early learning and child care programs through the Multilateral Framework Agreement on Early Learning and Child Care. As announced in the 2004 Budget, the Government of Canada will provide additional funding to provinces/territories under the existing Multilateral Framework in 2004-2005 and 2005-2006, which means more quality child care more quickly.
30. In Canada we value our universally accessible system of primary and secondary education. Education is a provincial and territorial responsibility, except in the case of status Indian children living on reserve. In this instance, the federal government has responsibility for education and consequently provides funding to First Nations who administer school programs on reserve or arrange for their students to attend provincial schools.
31. In 2002, the Government of Canada introduced the Child-Centred Family Justice Strategy to help parents focus on the needs of their children following separation and divorce and minimize problems by providing parents with tools to assist them in reaching parenting arrangements that are in the best interests of their child or children. This strategy builds on the new child support measures that came into force in 1997, which included federal child support guidelines and additional federal enforcement measures to help the provinces and territories ensure that family support obligations are respected.
32. The Government of Canada continues to support a range of targeted community-based programs that serve children and their parents, such as the Community Action Program for Children, the Canada Prenatal Nutrition Program and the Aboriginal Head Start program. These programs and services enable families and communities to promote the health and social development of children and families living in conditions of risk. In addition, through the Family Violence Initiative, a wide array of prevention and intervention approaches have been developed to better protect children and their families.
33. Across Canada, the well-being of children and their families is a priority for action in all jurisdictions. Most provincial and territorial governments have begun to explore ways to address the multi-faceted, intersectoral nature of issues affecting children and their families. Provinces such as Alberta, British Columbia, New Brunswick, Ontario and Québec have designated particular ministries for children and/or families. In 1996, the Province of Nova Scotia established the Child and Youth Action Committee (CAYAC) as a means for provincial ministries that share responsibility for services to children and youth to coordinate policy development. In 2000, Manitoba established a similar senior-level committee, called the Healthy Child Committee of Cabinet, and it signals healthy child and adolescent development as a top-level policy priority. Some other examples include Prince Edward Island, which created a Children's Secretariat to support the Premier's Council on Healthy Child Development, and Nunavut, which created the Children First Secretariat, an inter-departmental committee of Deputy Ministers. Finally, Québec invests significant resources in an integrated approach toward family and childhood services, which strives to foster child development and equality of opportunity. It gives special weight to early intervention, including through family income support measures and early learning and child care programs (such as early childhood centres and after-school care services at minimal cost).
34. A number of provincial governments have also appointed advocates for children and youth and, although the mandate of the advocates differ, they have come together in the Canadian Council of Provincial Child and Youth Advocates to share their common commitment to further the voice, rights and dignity of children. This council includes five provincially appointed Children's Advocates (in Alberta, Manitoba, Newfoundland and Labrador, Ontario and Saskatchewan); the Nova Scotia Office of the Ombudsman, Children's Section; the Commission des droits de la personne et des droits de la jeunesse du Québec; and the British Columbia Child and Youth Officer. Broadly speaking, Children's Advocates have the authority to become involved in the following activities: to ensure that the rights of children and youth are respected and valued in our communities and in government practice, policy and legislation; to promote the interests of, and act as a voice for, children who have concerns about provincial government services; to engage in public education; to resolve disputes, and conduct independent investigations; and to recommend improvements in programs for children to the government and/or the legislative assembly.

(4) Supporting the health of children in Canada

35. The responsibility of governments to protect our health is a key component of Canada's social contract. Public health, defined as the organized efforts of society to protect, promote and restore the health of the entire population,

has three main functions: disease and injury prevention and control; protection from health threats; and health promotion. Canada's public health efforts include programming and services related to communicable (infectious) and non-communicable (chronic) diseases; injuries; threats to health such as environmental toxins; poor nutrition; pollutants; and the safety of food and blood supplies. Canada's current efforts have focused on individual threats to health such as specific diseases or conditions like diabetes and the promotion of protective factors such as healthy living. Children are a key population for public health efforts.

36. In addition to public health, Canada provides a publicly financed health care system through 13 interlocking provincial and territorial health insurance plans which adhere to national principles set at the federal level: public administration, comprehensiveness, universality, portability and accessibility. The aim of this system is to ensure that all insured residents of Canada, including children, have reasonable access to a range of medically necessary goods and services, unimpeded by financial or other barriers. The Government of Canada's Non-Insured Health Benefits program provides registered Indians and recognized Inuit (regardless of residency) with medically necessary goods and services that supplement benefits provided through other private or provincial/territorial programs. In February 2003, federal, provincial and territorial governments committed to accelerate primary health care reform so that all citizens, including children, receive comprehensive primary health care services. A Health Reform Fund was created to support provincial and territorial renewal efforts and will transfer funds to provinces and territories over five years to address the priorities of primary health care reform, home care and catastrophic drug coverage. This is in addition to the Primary Health Care Transition Fund created by the Government of Canada in 2000 to support primary health care renewal at both provincial/territorial and federal levels for all age groups.
37. The Federal/Provincial/Territorial Ministers of Health agreed in September 2002 to work together on an Integrated Pan-Canadian Healthy Living Strategy. The initial areas of emphasis for the Strategy are physical activity and healthy eating and the relationship of both to healthy weights. Each year in Canada, more than three-quarters of deaths result from four groups of non-communicable diseases: cardiovascular, cancer, diabetes, and respiratory. Risk factors that lead to these diseases, such as physical inactivity and unhealthy eating, are growing, particularly among some vulnerable groups. The Healthy Living Strategy is aimed at reducing non-communicable diseases by addressing their common risk factors and the underlying conditions in society that contribute to them. Consistent with this focus on healthy living, the Canadian Sport Policy was endorsed in April 2002 by federal, provincial and territorial ministers responsible for sport. It aims to have a dynamic and leading-edge sport environment that enables all Canadians to experience and enjoy involvement in sport to the extent of their abilities and interests and, for increasing numbers, to perform consistently and successfully at the highest competitive levels. Further, Canada signed the Framework Convention on Tobacco Control on July 15, 2003. This is the first public health treaty developed by the World Health Organization (WHO) and it sets out government obligations to address tobacco control issues including those that affect youth.
38. In an effort to protect children from health and environmental risks and contaminants, the Government of Canada regulates and strengthens health and environmental protection, through such measures as the Pest Control Products Act and the Canadian Environment Protection Act. Protective measures also include toy safety and allergy alerts, food and drug controls, and safety regulations in areas under federal control.
 - (5) Promoting healthy, safe and supportive communities
39. All sectors of Canadian society are working together to ensure our children and their families reap the benefits of a safer society through healthy and supportive communities. The National Crime Prevention Strategy, introduced in 1998, supports communities in developing innovative, grass-root approaches to preventing crime and reducing victimization through collaboration at all levels of government and communities. It places particular emphasis on children and youth at-risk, Aboriginal peoples and the personal security of women.
40. The Government of Canada is committed to working collaboratively with the provinces and territories to improve the youth justice system. The Youth Justice Renewal Initiative, announced in May 1998, led to the enactment of comprehensive new laws.
41. Launched in 1999, the National Homelessness Initiative, which includes the Supporting Communities Partnership Initiative, Youth Homelessness Strategy, and research, is helping to meet the emergency and basic needs of the homeless population, as well as some transitional and supportive housing needs. In partnership with the provinces and territories, the Government of Canada also launched the Affordable Housing Initiative in 2001 to improve the affordability and supply of rental housing, especially in urban centres.
42. Federal, provincial and territorial governments work together with their partners, both nationally and internationally, to protect children from parental abductions and have them returned promptly. Canada's Our Missing Children program and the National Missing Children's Service provide broad support to parents and police.
43. In 2002, the Government of Canada introduced amendments to the Canadian Criminal Code to better protect children from abuse and exploitation. These amendments will strengthen child pornography provisions, protect children against sexually exploitative relationships and increase maximum sentences for child-related offences. In the 2004 Budget, the Government of Canada announced new funding to launch a National Strategy to counter sexual exploitation of children on the Internet.
 - (6) Improving the well-being of Aboriginal children and their families
44. The Government of Canada is working together with Aboriginal communities, leaders and Elders, as well as provincial and territorial governments to improve the health and well-being of Aboriginal children and their families (First Nations on and off reserve, Métis, non-status Indians and Inuit). While all governments in Canada are responsible for the health of their youngest citizens, the federal government has a primary although not an exclusive responsibility for the health of First Nations children on reserves and Inuit children. The Government of Canada

reiterated its commitment to ensuring Aboriginal children get a better start in life in the 2004 Speech from the Throne. The 2004 Budget announced a further investment in early learning and child care for First Nations children living on reserves, in addition to the increased investment announced in the 2003 Budget.

45. Since 1998, under the First Nations National Child Benefit Reinvestment initiative, First Nations have been reinvesting social assistance savings in programs and services for low-income families with children in such areas as child care, nutrition, early childhood development, employment and training supports, and community enrichment. In 1998, the Government of Canada launched an Education Reform Initiative in partnership with First Nations stakeholders and communities, to strengthen management and governance capacity, improve the quality of classroom instruction, increase parental and community involvement, and support school-to-work transitions.
46. The Federal Strategy on Early Childhood Development for First Nations and other Aboriginal Children, announced in October 2002, complements the September 2000 Early Childhood Development Agreement. The strategy seeks to improve existing programs and services, including Aboriginal Head Start, First Nations and Inuit Child Care, and Fetal Alcohol Spectrum Disorder (FASD) prevention and supports, with a particular focus on children on reserves. The 2003 Budget announced funding to improve early learning and child care programs for Aboriginal children, primarily for those living on reserve. This funding will complement the federal transfer to provinces and territories in support of the Multilateral Framework on Early Learning and Child Care. The Government of Canada supports the delivery of culturally appropriate, First Nations-managed child welfare services. In 2000, together with the Assembly of First Nations and First Nations child and family service agencies, the Government of Canada completed a national policy review of First Nations Child and Family Services that is expected to result in significant improvements to the system. In addition, the Urban Aboriginal Strategy, introduced in 1998 and further extended in the Budget 2003, is supporting pilot projects to explore new ways to better meet the needs of urban Aboriginal peoples, including children and their families. It also provides for additional funding to address critical issues such as the high turnover of teachers in some First Nations schools and the need to support families' involvement in the education of First Nations children.

(7) Building on what we know

47. Canada's efforts to support children and families are based on a strong body of evidence for what works best. Continued investments in research, monitoring and knowledge development are allowing Canadians to track progress and to monitor how children in Canada are doing. Initiatives such as the Canadian Hospitals Injury and Prevention Program, the Centres for Excellence for Children's Well-being, the Health Behaviours in School-Aged Children Survey, the Canadian Perinatal Surveillance System, the Canadian Paediatric Surveillance Program, the Participation and Activity Limitation Survey, the Canadian Incidence Study of Reported Child Abuse and Neglect, the Enhanced Surveillance of Canadian Street Youth System, the National Longitudinal Survey of Children and Youth (NLSCY), New Canadian Children and Youth Survey, the Aboriginal Peoples Survey, Aboriginal Children's Survey, the Social Development Partnerships Program, and the international Child Protection Research Fund combine quantitative and qualitative knowledge development from surveys and statistics with community-based research and the collection and sharing of best practices. In addition, in the 2004 Budget, the Government of Canada announced a significant expansion of the Understanding the Early Years (UEY) initiative which will enable communities to make informed decisions about the best policies and most appropriate programs for young children and their parents.
48. Actions taken for children in the last ten years have provided Canada with a range of experiences that demonstrate which interventions are most effective and indicate how government action can best be structured for children. We have learned that effective action for children requires heightened coordination within and across governments and with other partners and stakeholders. We have also learned from the research cited above that strong, broad-based social investments, coupled with an additional focus on prevention among children most at risk, can improve the well-being of children and offset the effects of disadvantage. By combining universally available programs with more targeted initiatives, governments and their partners can reach all children and families, directing special attention to those who are in greatest need.

(8) Supporting the world's children

49. At the global level, the 1990s was a decade of great promise and modest achievement for the world's children. On the positive side, the World Summit for Children and the entry into force of the Convention on the Rights of the Child helped to accord political priority to children. International legal provisions and mechanisms emerged to strengthen the protection of children. Regional commitments were made. Pursuit of the World Summit for Children goals was rigorously monitored in the 1990s and led to many tangible results for children: fewer children are now dying of preventable diseases; polio has been brought to the brink of eradication; and, through salt iodization, 90 million newborns are protected every year from a significant loss of learning ability.
50. Yet critical challenges remain. More than 10 million children still die each year from preventable causes; 121 million children are still out of school (54 percent of whom are girls); 150 million children are suffering from hunger and malnutrition; and HIV/AIDS is spreading rapidly. Persistent poverty, armed conflict, debt burdens and threats to health and social security lead to inadequate investments in social services. Many children are discriminated against and do not benefit from existing resources and social services. Children are also often excluded from participating in decision-making that directly affects them. Moreover, harmful and exploitative labour, the sale and trafficking of children and young people and other forms of abuse, exploitation and violence continue to be prevalent.
51. To help address these global challenges, Canada has committed to bolstering and strengthening its official development assistance in four priority areas of social development. The action plans for basic education, health and nutrition, and HIV/AIDS include a focus on children, while the action plan on child protection specifically addresses the rights of children in need of special protection from exploitation, abuse and discrimination.

52. The experience of the past decade has confirmed that the needs and rights of children must be a global priority in all development efforts. There are many key lessons: change is possible – and children’s rights are an effective rallying point; policies must address both the immediate factors affecting or excluding groups of children and the wider and deeper causes of inadequate protection and rights violations; targeted interventions that achieve rapid successes need to be pursued, with due attention to sustainability and participatory processes; and efforts should build on children’s own resilience and strength. Multi-sectoral programs focusing on early childhood and support to families, especially in high-risk conditions, merit special support because they provide lasting benefits for child growth, development and protection.

IV. PLAN OF ACTION

53. No one government, organization or individual alone can effectively address the broad range of issues affecting children today. A Canada Fit for Children was developed in close collaboration with a wide array of partners and reflects a consensus on a range of priority areas for children. Throughout the consultation process certain shared principles, priorities and strategies for action emerged. As a result, the action plan offers a collective vision for moving forward to create a Canada and a world fit for children. It is a call to action, identifying strategies that everyone in Canada can contribute to in different ways and at different times, and inviting all sectors of Canadian society — governments, organizations and individuals including children — to take it forward as a common task.

A. Creating a Canada and a World Fit for Children

54. “We want a world fit for children, because a world fit for us is a world fit for everyone”, said the children when they spoke to the General Assembly at the Special Session on Children. And then they reminded us that we are all responsible for creating it. Everyone recognizes that families, neighbourhoods, schools, the media, peer groups and the wider community influence the lives of children, but so do government policies and programs, the work environment of parents and caregivers, the physical characteristics, and the social climate of the communities in which children are growing up, including the broader culture that surrounds them. Everyone is implicated in shaping the world for children whether or not we are conscious of what we are doing. So for our sake as well as theirs, everyone must work together to improve our world. We also recognize that this is a two-way process. Not only are children greatly affected by the multiple environments in which they grow up, but they can also be powerful agents of social and cultural change. We in Canada recognize the importance of participation of children to their own healthy development, as well as to the development of the communities in which they live and to society at large.

55. We commit to implementing the Plan of Action according to the following principles based on Canadian values:

Recognition that parents (and legal guardians where designated) have the primary responsibility for the care and nurture of children

56. Families are the natural environment for the care and nurture of children. It is within the family environment that children spend much of their time and where a significant portion of their development occurs. Families, in turn, are strongly influenced by the physical, social and cultural environments in which they live. This Plan of Action recognizes that strong relationships must exist among children and parents, legal guardians, other family members, direct caregivers and community members to ensure the healthy development of children.

Recognition of governments’ roles and responsibilities

57. The protection of children is fundamental to the Plan of Action. All governments in Canada are determined to protect children from harm, securing their healthy development and well-being and respecting both their dignity and their resilience. While parents have the primary responsibility for the protection, care and nurture of their children, a responsibility which governments support, there are cases when families break down or are unable to function, and thus society — through the power it has delegated to government — must act, maintaining the best interests of the child as a primary consideration. As a society, we share a collective responsibility for the safety and security of all children, and must work together to model and promote a culture of respect.

Respect for the diversity of children’s communities, culture and background

58. Children in Canada come from a variety of backgrounds, communities and experiences. Many of them are first or second generation immigrants from every corner of the globe. They speak many languages, enjoy diverse cultures and traditions, and live in a range of settings from busy urban centres to remote rural or Northern communities. We recognize the specific circumstances of Aboriginal children and accept the obligation to work with Aboriginal communities to develop and implement culturally relevant strategies to care for, protect and promote the rights of their children, ensuring that they remain connected to their culture. Our international work for and with children requires the same degree of sensitivity. Building a world fit for children can only be done if we recognize the inherent dignity of each and every child.

Ensuring social inclusion

59. All children must be provided with opportunities that enable their full participation in society. Experiences of discrimination can have a serious negative impact on the health and well-being of children. No child should be excluded on the basis of race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, sexual orientation, birth or other status. Social inclusion is one of the primary and most effective vehicles for addressing the rights of all children. It is important to create inclusive, flexible and responsive systems that strive to reduce disparity, promote diversity and enhance awareness of social inclusion for all children.

Participation of children

60. Children who are capable of forming their own views have the right to express those views freely in all matters affecting them, their views being given due weight in accordance with their age and maturity. The active involvement of children in decision-making expands the diversity of perspectives reflected in the process, and contributes to more relevant and equitable policies and programming including more sustainable outcomes. Meaningful child participation increases children's capacity for responsible citizenship and their respect for democratic principles.

Fostering multi-sectoral collaboration

61. The interrelated nature and indivisibility of children's rights demand holistic, multi-faceted and cross-jurisdictional responses. Providing adequate and effective supports to children requires the continued commitment of all sectors of society, including the public, non-governmental and private sectors.

Sharing research, information and best practices

62. Research plays an essential role, not only in finding new solutions, but also in determining the nature of the challenge and measuring progress toward goals. Much work has been done in Canada and in other nations to study, analyze and review the situation and needs of children. We in Canada recognize the importance of expanding our knowledge to ensure that our decisions are evidence-based.

Recognizing and acting on responsibilities for all the world's children

63. While we are working together for children in Canada, we recognize that children internationally, particularly in developing countries and countries in transition, are also a priority. Challenges such as poverty, hunger, disease, natural disasters, armed conflict and terrorism remain the biggest obstacles to realizing the rights of children worldwide. Canada's foreign policy and particularly our official development assistance, as well as the work of many Canadian non-governmental organizations, all play important roles in building a world fit for children. The private sector also has a responsibility, especially in countries in which a company does business.

B. Goals, Strategies and Actions for Canada

64. Although A Canada Fit for Children is based on A World Fit for Children, the themes of the latter have been rearranged into the following four categories to reflect the priorities that Canadians identified during the consultative process: supporting families and strengthening communities; promoting healthy lives; protecting from harm; and promoting education and learning.

1. Supporting Families and Strengthening Communities

65. Canadians recognize that strong families and communities are crucial to the well-being of children. All of society benefits when parents are supported in their ability to give their children the best possible start in life. But parents are often placed under stress by the need to keep pace with the modern knowledge economy and by the numerous other demands on their time and energy. Since the communities in which children live, play and learn also influence the quality of childhood, it is important that they are safe and secure, and provide a variety of easily accessible programs and services for families with children. The unique role of friends and neighbours needs to be recognized and valued.

Priorities for action

(a) Child- and family-friendly policies

66. Policies within the workplace, the community and the larger social environment structure our daily lives as citizens. Understanding the way in which children and families are affected by the policies we design and implement is crucial. Policies that are child- and family-friendly are defined by their ability to support children and families where they live, learn, play and work. Such policies provide opportunities for social inclusion and participation in community life.
67. In our actions, we will foster and promote the capacity of children and adults to work together in meaningful partnerships. Child-friendly policies will recognize the expertise and unique understanding that children have, about both their local environments and global issues. We will strive to ensure the effectiveness of awareness campaigns directed at girls, boys and adolescents by ensuring that they are accessible, inclusive, age appropriate and made available in child-friendly format. As part of our shared responsibility to raise healthy children and promote and support families, we will continue to work together to build a child-friendly and family-enabling society by developing policy initiatives that are culturally rooted, collaborative and accountable.

(b) Early learning and child care

68. Every child deserves a healthy start in life. Early childhood to age six is a critical period for child growth and development. Research has shown that quality early learning and child care has a positive impact on child outcomes. A comprehensive system of early learning and child care programs based on principles of inclusion, affordability, accessibility, quality and parental choice can provide the positive stimulation and nurturing in the early years that lay the foundation for learning, health and behaviour throughout a person's life.
69. We have already made progress in improving access to affordable, quality and regulated early learning and child care programs. Conscious of populations with special needs such as children with disabilities or children living in rural and remote areas, we will strive to ensure that a wide array of opportunities for early learning and child care is available for every child by working together with families, community-based organizations, businesses and labour.

(c) Poverty

70. Nobody should have to live in poverty, especially a child. The consequences of growing up in poverty can follow children throughout their lives. It can contribute to poor developmental outcomes and social exclusion. It is often

associated with inadequate nutrition, poor physical and mental health, and problems in learning. The neighbourhoods in which children whose families are poor live are often run-down and unsafe.

71. While significant efforts have been made to address poverty in Canada, we need to continue to work to ensure that all children have a good start in life. Income security and the health and well-being of children are central to the kind of society we want. We must never lose sight of the goals of supporting families in their efforts to secure work, find affordable housing, access health care and pursue learning opportunities.
72. We will continue to work together to provide a broad spectrum of supports to parents and families in order to improve the circumstances of children. Each sector has its own unique role to play in addressing poverty and by working together we can build on past achievements. Through sharing information on programs, services and supports for families we can identify what works to help them out of poverty and create prosperous communities. We will pay special attention to those who are in greatest need including Aboriginal families, immigrants and refugees, children with disabilities, children whose families have come apart, and children who are living on the streets.

(d) Separation and divorce

73. Families that are breaking up require special supports. Separation and divorce are stressful transitions that can have a profound effect on the health and well-being of children. Many couples manage reasonably well and keep the best interests of their children in mind but some will need support to deal with their anger and grief, as well as assistance to cope with conflicts, communicate with their former partner and work out child-focused parenting arrangements.
74. The family justice system responds, in part, to the challenge of family break-up. Making it as child-friendly and inclusive as possible, with the views of the child being given due weight in accordance with the age and maturity of the child, is important in order to ease the stress children and families often face. The collaborative efforts of many partners will be necessary to render the family justice system less adversarial and more child-centred. We will continue to work to provide separating and divorcing couples with the support and the tools they need to assist them in reaching parenting arrangements that are in the children's best interests.
75. Parental child abduction occurs when a parent unilaterally removes and/or prevents a child from returning to a parent with lawful rights of care and control. This can include situations where a child is taken to a foreign country without joint parental consent. Separation and divorce are often contributing factors. Parental child abduction is a form of abuse from which children can suffer emotionally and psychologically.
76. Partners, both nationally and internationally, will continue to work together to protect children from parental abductions and have them returned promptly. Where appropriate, we will continue to apply the Canadian Criminal Code, which recognizes child abduction as a serious crime. We will continue to promote internationally the Hague Convention on the Civil Aspects of International Child Abduction (the Hague Convention) which Canada ratified in 1983, as well as encourage non-Hague Convention states to comply with related obligations under the United Nations Convention on the Rights of the Child and other multilateral treaties they have ratified.

(e) Social inclusion and diversity: Building community

77. Respect for diversity and active civic participation are core Canadian values. Yet some children, young people and adults, such as members of ethnic and racialized groups and various religious faiths, those with disabilities, immigrants and refugee children, Aboriginal peoples, children who are living on the streets, members of official language minority communities, or people living in the North or other remote areas, may experience barriers to full participation in society. Barriers may also exist based on gender or sexual orientation. These barriers can prevent parents, families and legal guardians from providing a balanced, integrated life for their children. Barriers may also prevent children and young people from sharing their opinions and fully participating in the creation of a Canada that responds equitably to all.
78. We recognize that all children in Canada have the right to participate and contribute, in accordance with their abilities, as valued and respected members of communities and society as a whole. As a multitude of experiences contribute to Canada's diverse fabric, it is important that legislation, policy, services and activities are sensitive to the barriers that can affect children, young people and their families.
79. Children have much to contribute. Indeed, awareness of, and concern for the unique and, in many cases, multiple barriers faced by some children in Canada will build a more inclusive society by diminishing the perception that one approach can fit everyone. The development of participatory processes and partnerships between those who make decisions and those who are affected by them may also facilitate an increased sensitivity toward unintended barriers that affect children. Committed to engaging citizens in decisions that affect them, we will strive to ensure that children have the opportunity to participate in civic life to their full potential and that Canada is a society in which all children feel they belong.

(f) Aboriginal children

80. Although there have been improvements in the health and well-being of Aboriginal children in Canada over the years, it is clear that significant challenges remain. Improving the situation of Aboriginal children (First Nations living on and off reserve, Métis, non-status Indians and Inuit) consistently ranked among the highest priorities Canadians identified as this national plan of action was being prepared. Many Aboriginal children live in poverty and have poor physical and mental health. As a group, they are over-represented in the child welfare and youth justice systems. Far too many living on reserve are in substandard and crowded housing and have difficulties accessing health, social and educational services; and their parents have higher unemployment rates. Inuit children living in Canada's northern communities experience many problems including high suicide rates. They also face isolation and greater distances to access services and support – conditions and circumstances they share with children living in other remote areas of Canada. Aboriginal children living in urban centres frequently face marginalization in mainstream

school systems and may live with their families in inadequate housing. Culturally appropriate care and services for Métis children are underdeveloped.

81. Aboriginal communities (including urban, rural and remote northern communities) are integral to the social fabric of Canada. Partners will strive to ensure that Aboriginal children are provided with opportunities to flourish. We will move toward closing the gap between Aboriginal children and others in Canada. This includes building on our commitment to address the gap in life chances and health status between Aboriginal and non-Aboriginal children, working to strengthen preventative measures to curb the number of Aboriginal children coming into the child welfare system, and working with provinces and territories, Aboriginal leaders, and communities to improve education outcomes for children.
82. Together, we will strive to build supportive environments to improve the healthy development of Aboriginal children through safe, affordable housing, access to quality and culturally specific health services, child care and schools, as well as improved supports for parents, families and communities. We will continue to promote and support the health and early learning of Aboriginal children through early childhood development and head start initiatives, and will work toward effective learning systems that respect the unique cultural identities of Aboriginal children. We will also continue to work together toward culturally appropriate child welfare supports to improve the well-being of Aboriginal children, young people and families. Community-driven, integrated approaches to improve the well-being of Aboriginal children will be crucial to our progress. Continued efforts should be directed toward the development of partnerships and coordination among all sectors to promote and support indigenous, holistic responses.
(g) Inclusion and support of children with disabilities
83. Canadians believe that children with disabilities should have equity of access to programs and services that allow them to reach their full potential and participate as they wish in society, along with other Canadian children and young people. Canadians also recognize the particular challenges faced by parents of children with disabilities and the extra supports they may require.
84. To reach this goal we in Canada must ensure that children with disabilities are presented with a wide range of opportunities for participation in society. We will support measures that allow for the inclusion of children with disabilities so they can interact alongside their peers and increase access to integrated, quality learning and recreational programs. We will expand the knowledge base on children with disabilities to identify ways to further support inclusion in Canadian communities. Ensuring that parents and other caregivers have the support they need to care for their children, and have the necessary tools to create inclusive environments, we will foster and promote strong community capacity to support children with disabilities and their families. In recognition of the extra costs faced by some families with children with disabilities, we will strive to provide a range of supports to help meet the needs of the child and the family.
(h) Poverty and sustainable development: An international priority
85. Poverty in the developing world reduces life choices for many children. Poverty impedes their chances of acquiring the skills, capacities and confidence they need to reach their full potential. Many are denied their rights related to education, health and nutrition, and to participation, as well as to freedom from abuse, exploitation and discrimination. Investing in the world's children is crucial to breaking the cycle of poverty and achieving equitable and sustainable human development.
86. We in Canada are committed to a sustained reduction both in the number of children and families living in poverty in developing countries, and in the extent of their deprivation. Using a multi-faceted approach we will support locally owned national poverty reduction strategies in close coordination with the international donor community in order to encourage equitable economic growth and improved standards of living for poor children, their families and communities. This work will involve our continued investments in social development with a focus on children, including measures for children in need of special protection from abuse, exploitation and discrimination. We will also seek to improve the environmental conditions of people living in poverty and to ensure the environmental sustainability of poverty reduction efforts so that they benefit both present and future generations of children. Encouraging the participation of children living in poverty and that of their families and communities in decision-making will enhance respect for democratic principles and human rights, including the rights of the child. By promoting good governance and by strengthening civil society we will help to build the capacity of individuals, communities and institutions in developing countries to sustain their own social and economic progress. As an integral part of all our poverty reduction policies, programs and projects, we will support the achievement of equality between men and women and between girls and boys.

2. Promoting Healthy Lives

87. We in Canada are committed to promoting and maintaining the physical and mental health of all children in Canada. We recognize that healthy living includes participation in society and in activities, such as arts and culture, as well as engagement in healthy physical practices. We will aim to reduce inequities in health status among different groups of children, and will take action on the factors and conditions that have been shown to influence the health of populations. Gender considerations will be addressed in our work on children's health to ensure that the distinct issues of boys and girls are taken into consideration in policies and programs.

Priorities for action

(a) Healthy active living

88. Healthy eating and physical activity play a fundamental role in promoting healthy growth and development and reducing the risk of chronic disease. By creating supportive environments and encouraging informed choices, children in Canada can establish patterns for healthy living that they will carry into adulthood. Physical activity, sports

and recreation programs provide considerable physical benefits for children and can also serve as tools to teach important values and life skills including self-confidence, teamwork, communication, inclusion, discipline, respect and fair play.

89. We in Canada will promote and support physical and mental health among children through sports, physical activity, healthy eating and good nutrition, play, recreation, and opportunities for artistic and cultural expression. We will create supportive social and physical environments that enable young Canadians to make informed choices about healthy eating and physical activity. Efforts will also be made to provide adequate facilities for physical, recreational, artistic and cultural activities. We will encourage the availability of sufficient nutritious and safe foods, and strive to ensure access to safe and affordable physical activity opportunities. We will continue to be leaders in focusing on healthy eating, physical activity and their relationship to healthy body weight.
90. We will address low activity levels of children by increasing opportunities for physical activity and play and by creating more positive experiences around physical activity and sports. We will remind parents, teachers and children of the simplicity and power of play and encourage families to be active together. We will increase participation in sports by promoting opportunities for children to engage in sport and physical activity in the school setting, as well as by enhancing collaboration among sport organizations.
91. Partners will continue to ensure that nutrition considerations are integrated into health, education, agriculture, social and economic policies and programs. Canada will continue to promote the nutritional health and well-being of Canadians by collaboratively defining, promoting and implementing evidence-based nutrition policies and standards, including nutrition recommendations and dietary guidelines for general populations and specific life stages, such as Canada's Food Guide to Healthy Eating. Collaboration between partners will continue to inform nutrition programs and policies.

(b) Effective parenting

92. Good parenting skills, a cohesive family unit and parents who are mentally healthy all contribute to a family environment that increases the personal resources and coping skills of children, and reduces their vulnerability to poor developmental outcomes. Positive stimulation and nurturing in the early years lay the foundation for physical and mental health, social, spiritual and moral development, learning and behaviour.
93. We in Canada recognize that many parents and other caregivers have expressed the need for more knowledge with respect to child development and child rearing. We will offer them opportunities to develop the confidence and acquire the skills and knowledge they seek. We will continue to promote positive and effective parenting throughout the developmental continuum. We will also inform young people about healthy development and parenting-related issues to increase understanding and better prepare them to be parents. We will support the development of culturally appropriate and diversity-sensitive approaches that recognize the uniqueness of families. We will also provide a range of supports for pregnant women, new parents, infants and care providers to help meet their needs during the prenatal, birth and infancy periods.

(c) Mental health

94. A significant number of children in Canada have mental health issues that are serious enough to warrant clinical intervention. While some of these problems have physiological roots, family, school and community environments also have a profound influence. All children face challenges in their psychosocial development but most of them are surmountable problems that, in fact, help them to grow. However, if there are too many problems at once or if they are not resolved, then the child may find it difficult to adjust and become prone to dysfunctional relationships and to making unhealthy choices.
95. All children benefit from opportunities to experience success, to make constructive choices, to understand emotions, and to share thoughts and feelings safely with one another and with adults. We in Canada will create and maintain the conditions that promote the mental health of children, young people and their families, and will strive to prevent or minimize the adverse consequences of emotional problems and mental illness. Depression in children is a growing concern. The suicide of young people, which is occurring too frequently in both Aboriginal and non-Aboriginal communities, is the ultimate tragedy; every effort must be made to prevent it.
96. We will make the promotion of mental and emotional health a key element of health promotion and protection strategies. We will recognize the interdependence of the generations and the critical role of community and family. We will raise awareness of the interactions between mental health and other pressing health and social issues, including gender, poverty and isolation. We will also promote understanding of healthy psychosocial development, respect the rights and dignity of persons experiencing emotional problems and mental illness, and reduce the stigma associated with mental health issues.

(d) Immunization

97. Vaccine-preventable diseases were at one time the major cause of morbidity and mortality in Canada, particularly in children. While these diseases are mostly under control in this country, there are still too many cases of severe, preventable illness and death. Globally, vaccine-preventable diseases are a major problem and the risk of importation or reintroduction to Canada remains a constant threat. We in Canada should be vigilant and responsive in our approaches to immunization. National collaboration on immunization issues is critical. Those who care for children must become informed about vaccines and their importance in protecting children from preventable illness and death.
98. We will work together to improve the safety and effectiveness of immunization programs in Canada. We will strengthen key infrastructures and programs that address immunization issues such as vaccine safety, surveillance

of vaccine preventable disease and immunization coverage, research and professional and public education. Partners will continue to work to enhance the vaccine procurement process in Canada.

99. We will improve the monitoring and control of vaccine preventable diseases and the security of the vaccine supply. We will work to identify appropriate processes to address the variable access between jurisdictions to new, publicly funded vaccines. We will also address vaccine issues with, and for special populations (such as Aboriginal children, immigrants, refugees and travellers). We will expand information on which policy decisions are made and promote the best information possible about the safety and importance of vaccines.
 - (e) The physical environment and the prevention of injuries
100. Natural and constructed environments play a crucial role in the healthy growth and development of children. The physical environment within which children live includes the air they breathe, the water they drink, the food they eat, the products they use and the settings in which they live, learn and play. Children are particularly vulnerable to environmental contaminants and questionable consumer products due to their unique physiology, behaviours and exposures. Injuries are the leading cause of death and a significant cause of hospitalization, impairment and disability for children in Canada. Protecting children from the hazards in the natural as well as the constructed environments in which they live and grow yields tremendous benefits for Canada and the world.
101. We believe that children should live in safe, affordable housing, have access to healthy child care and learning environments, and be part of safe, healthy and caring communities. Partners will continue to regulate and strengthen health and environmental protection. We will strive to protect infants and children from health and environmental risks and contaminants in products, air, food, soil and water. We in Canada will support transportation strategies that encourage citizens to walk, bike and use public transport to enhance their health and protect our environment. We will perform risk assessments that address the unique vulnerabilities of children, conduct and act on research regarding exposures to environmental contaminants and their effects, as well as support the development of strategies that protect the environmental health of children.
 - (f) Sexual and reproductive health
102. Girls, boys and adolescents in Canada need to acquire the capacity to manage the range of sexual health issues they encounter as they are growing up in our complex contemporary society. Sexually transmitted infections (STI), including Human Immunodeficiency Virus (HIV), affect a disproportionate number of young people in Canada and worldwide. It is important that children form positive personal identities at a young age, learn to respect themselves and others and are able to develop and maintain healthy relationships. With these skills, children and adolescents are more likely to engage in sexual behaviours that are safe and appropriate.
103. Sexual and reproductive health needs to be promoted as an important component of healthy living, with the recognition that all people, including girls, boys and adolescents, have the right to access information, education and services required to protect their overall health. Canada will support the development of guidelines for sexual health education, including age and stage guidelines, which highlight sexual and reproductive developmental milestones across the lifespan, facilitate discussion about healthy sexuality and can be of benefit to parents, teachers and health care providers in their respective roles with Canada's youth. The goals of sexual health education should be to help children and adolescents understand their sexuality and guide them toward healthy relationships and eventually the joy of desired parenthood. It should also help protect them from unintended pregnancy, HIV/STIs, sexual coercion and sexual dysfunction. Effective sexual health education needs to be broadly-based, community-supported and involve the participation of the educational, medical, public health, social welfare and legal systems.
104. Canada will support research, policies and programs related to sexual and reproductive health that are inclusive and culturally sensitive and recognize the positive role that parents can play with respect to their own children. There will be a continuous effort to understand the potential individual and societal impact of sexually transmitted infections and to develop and promote policies that minimize marginalization or stigmatisation of affected populations. Comprehensive, evidence based, accessible programs and services will continue to be promoted to ensure that children and adolescents have the knowledge and skills they need to achieve sexual health and avoid negative outcomes. Specific attention will be paid to research on assisted human reproduction and genetics so that this knowledge can be made available to young people as they grow up and begin to think about having children.
 - (g) Tobacco, alcohol, drug abuse and addictions
105. The use of tobacco, the abuse of alcohol and drugs, and the presence of addictions put the health and well-being of children, adolescents and families at risk in the home and in the community. In order to make stable, long-term progress, we must address underlying issues such as violence, anxiety, emotional and mental health problems, and social exclusion that bring children and adolescents to embark on self-destructive activities.
106. We in Canada will strive to prevent the use of tobacco, the consumption of alcohol and other drugs by all children and adolescents, and reduce the harm for those who use them or who are exposed to them through, for example, second-hand smoke. We will draw increased attention to the impact of using tobacco or consuming alcohol and other drugs during pregnancy. We already know that Fetal Alcohol Spectrum Disorder (FASD) in children is largely preventable. We will ensure that children and adolescents have opportunities to develop appropriate knowledge and decision-making skills to assist them in living healthy lives.
107. We will support legislation and other measures that help prevent the abuse of drugs and other substances by children and adolescents. We will research the nature of both physical and psychological addictions in girls and boys and adolescents, including the growing addiction to gambling. We will enhance treatment and rehabilitation for those affected by substance abuse. We will work toward reducing exposure to second-hand smoke in public and private spaces, and actively develop, promote and support healthy, substance-free images and behaviours in advertising

and in the media. We, together and in consultation with children and adolescents, will strive to create a healthy, addiction-free Canada.

(h) The health of Aboriginal children

108. A number of adverse health issues disproportionately impact Aboriginal children and their families including poor nutrition, paediatric type 2 diabetes, maternal and infant morbidity, pregnancies in young adolescents, injuries, unsafe drinking water, exposure to environmental contaminants, FASD, physical disabilities, physical and mental health problems, suicide, tobacco, alcohol and substance abuse.
109. Partners will continue to work together to address the gap in health status between Aboriginal and non-Aboriginal children. We will work toward improving access to health services and delivering them in a more seamless way, through better integration of programs at all levels. We will engage Aboriginal communities in their design and delivery so that they combine the best of both western and indigenous traditions. We will recognize the importance of traditional/country foods and traditional medicine to the health and well-being of Aboriginal peoples. We will also improve supports for parents, families and communities, increasing awareness of healthy pregnancies, as well as child health.

(i) Paediatric health care and research

110. In spite of our best efforts many children in Canada still fall seriously ill, sustain injuries or are medically fragile from birth or as the result of serious trauma. These children need specialized health care. While the delivery of health services is a provincial-territorial responsibility, all of us have a duty to ensure that the child's right to health is respected in a holistic manner and that paediatric health care is child- and family-friendly. Children have the right to be involved to the extent possible in medical decisions that affect them and they should be encouraged to be active in their own treatment in age-appropriate ways. The settings in which children find themselves should be specifically designed for them. The growing body of research on children's health should take into account that even young children have the right to be heard. We must also strive to ensure that drug trials always include paediatric populations and that paediatric research priorities are included in calls for proposals by research agencies interested in health.

(j) Health services in official language minority communities

111. There are many Canadians, including boys, girls and adolescents, who live in official language minority communities where they have limited access to health care services in their own language. We recognize the need to ensure that there are enough health care providers who can work in minority language communities and that providers have access to the information and training needed to serve patients in their own language.

International priorities

(k) Food security, nutrition, water and sanitation

112. Access to adequate food and nutrition is essential for children's optimal growth and development. Canada is committed to working with the international community in pursuit of the Millennium Development Goal (MDG) of halving by 2015 the proportion of people who suffer from hunger. This will involve working with the international community to eliminate micro-nutrient deficiencies; to reduce malnutrition among children under five years of age, with special attention to children under two years of age; to reduce the rate of low birth weight; to reduce the proportion of households without access to hygienic sanitation facilities and affordable and safe drinking water; and to promote breastfeeding.
113. We will help meet these goals by supporting initiatives, including in response to emergency situations, related to household food security, rural development through agriculture, micro-nutrient supplementation, breastfeeding, nutrition, and water and sanitation services. We will give special attention to the gender dimensions of these issues, recognizing the crucial role women play both as gatekeepers to household food security and nutrition and as major contributors to the household economy.

(l) Preventing and controlling communicable diseases

114. Through inadequate access to clean water and sanitation, lack of vaccinations and poor access to medical care, children die needlessly around the world of communicable diseases, particularly in developing countries. Over two million children under five die every year from diarrheal diseases, the majority of whom could be saved by the simple administration of oral rehydration salts. Another two million children under five die from pneumonia, most of whom could be saved with vaccinations and antibiotics. The biggest challenge that exists for protecting the lives of these children is giving them access to many of these simple, cost-effective interventions.
115. Canada will work with the international community toward the MDG goal of reducing the infant and under-five mortality rate by two-thirds by 2015. Canada will work to achieve this in collaboration with the international community by playing an active role in donor/partner networks and other international health initiatives and by supporting global initiatives to address communicable diseases such as tuberculosis, malaria, polio, and measles. Canada will continue to work with international health initiatives such as: the Global Alliance for Vaccines and Immunization; the Canadian International Immunization Initiative, in partnership with the WHO, the United Nations Children's Fund (UNICEF) and the Pan American Health Organization (PAHO); the global Stop Tuberculosis Initiative; Roll Back Malaria; and the Global Fund to Fight AIDS, Tuberculosis and Malaria. Other strategies could include: increasing the coverage of existing cost-effective interventions for tuberculosis; insecticide-treated nets for malaria; intermittent, presumptive malaria treatment for pregnant women; childhood vaccinations; and prompt treatment for children suffering from malaria, pneumonia and diarrhea. We will encourage integrated, community-based treatment and prevention programs for communicable diseases, as well as the integration of tuberculosis and HIV/AIDS prevention, care and treatment within the context of sustainable primary health-care programs.

(m) HIV/AIDS

116. Of the estimated 40 million people in the world living with HIV/AIDS, 2.5 million are children under the age of 15. The loss of parents and the breakdown of family and community structures are also taking a toll on the healthy development of countless numbers of children. To date more than 14 million children under the age of 15 have been orphaned by AIDS and this number is expected to nearly double to 25 million by 2010. Many children are leaving school early to care for sick parents, to tend to younger siblings or to work to provide for their families. Only now are the psychosocial impact and the economic costs beginning to be measured.
117. Canada will work to meet the goals laid out in the Millennium Declaration as well as the Declaration of Commitment that was agreed upon at the United Nations General Assembly Special Session on HIV/AIDS, including to reduce the proportion of HIV/AIDS infected infants and the impact on children orphaned and made vulnerable by HIV/AIDS. Canada will work with the international community to implement a comprehensive and balanced approach to prevention and care, treatment and support, including full access to sexual and reproductive health services. Strategies must be human rights focused, integrate gender equality and fully respect and support the special intervention needs of vulnerable groups, including orphans, injection drug users and commercial sex workers. Special attention must be given to supporting communities in dealing with orphans and vulnerable children including providing full access to education and social services.

(n) Sexual and reproductive health

118. Throughout the world, limited access to high quality sexual and reproductive health care and services continues to result in unacceptably high rates of maternal mortality and morbidity, sexually transmitted infections and unplanned pregnancies, the results of which can be devastating for women and adolescent girls, as well as for their children, for their communities and for future generations. Addressing these challenges is essential to the fulfilment of the right to the highest attainable standard of health, including sexual and reproductive health, as well as to the achievement of global poverty reduction, sustainable development and international targets including the MDGs. Canada, believing that sexual and reproductive health is critical to the overall health, survival and well-being of all individuals, is internationally recognized as a strong advocate for promoting and protecting the human right to the highest attainable standard of health, including sexual and reproductive health.
119. Canada will work with the international community to address sexual and reproductive health within the framework of the MDGs, as well as the goals agreed upon at the Cairo International Conference on Population and Development in 1994 and the Beijing Declaration and Platform for Action in 1995 and their five-year reviews. At these events [ICPD and Beijing] the international community agreed that all women and men, boys and girls, have the right to the highest attainable standard of health, with access to high quality sexual and reproductive health care and services, including family planning information and sexual and reproductive education. Although the ICPD goal of ensuring universal access through primary health care to a full range of sexual and reproductive health services is not specifically included in the MDGs, sexual and reproductive health is essential for achieving the MDGs of: eradicating extreme poverty and hunger; achieving universal primary education; promoting gender equality and empowering women; reducing child mortality; improving maternal health; and combating HIV/AIDS, malaria and other diseases.
120. Canada will support achievement of these goals through strategies that include but are not limited to placing priority on programs that improve coverage of family planning services and maternal and child health through a multi-disciplinary approach that focuses on underlying social factors (such as employment, income, education and the status of women). Comprehensive strategies for this will include: promoting prevention, diagnosis and treatment of sexually transmitted infections; prevention of injury and violence against girls (including female genital mutilation); and targeting both school-based and out-of-school girls, boys and adolescents. Canada will implement these strategies with partners at the national, regional and international level, as well as take an active role in international reproductive health networks, particularly those relevant to child and adolescent health. This will include continued support to key multilateral organizations (such as the United Nations Population Fund, WHO, PAHO and UNICEF) for integrated and collaborative reproductive health research, policy and program delivery.

3. Protecting from Harm

121. Most children in Canada live in families and communities that nurture and protect them. A significant number, however, experience abuse, violence, exploitation or neglect in their immediate surroundings. Some adolescents, who become street-involved or homeless, risk further harm. When children are maltreated, or at significant risk of being maltreated, state authorities have an obligation to intervene to protect them and/or assist them, preserving the family unit whenever it is safe and reasonably possible.
122. We are committed to protecting children from harm in Canada and abroad, and will continue to support approaches that promote effective prevention and intervention, recognizing the underlying factors that can contribute to situations of abuse, violence, exploitation or neglect. We will respond effectively to these situations, supporting victims, ensuring appropriate consequences to perpetrators, and fostering understanding and capacity among children, young people, families, communities and society to take action. We will work together to create safe and caring environments that are free from discrimination and are sensitive to gender and culture, which celebrate diversity and promote the healthy development of children.

Priorities for action

(a) Child maltreatment

123. Child maltreatment, which includes physical and sexual abuse, emotional maltreatment and neglect, continues to be a significant issue in Canada. Child maltreatment poses serious immediate and long-term risks to the health and development of children. Neglect is the most common reason for child welfare investigations, followed by physical abuse, emotional maltreatment and sexual abuse. The factors contributing to these conditions are complex and

multi-layered. Neglect is frequently associated with conditions of poverty. Child maltreatment is more likely to occur in situations where other forms of family violence are present; exposure to family violence is increasingly being recognized as a form of child maltreatment.

124. We in Canada are committed to the protection of children from all forms of child maltreatment. We will continue to support strategies in the home, in out-of-home care, and in our communities that promote the healthy development and well-being of children, and assist those who have been maltreated. We will ensure appropriate criminal justice responses to incidents of abuse and neglect. We recognize the ongoing concerns of specific populations such as children from Aboriginal, ethnocultural, remote and rural communities, children with disabilities, children in out-of-home care, and children who are street-involved and homeless.
125. Partners will seek to understand the complex and multi-faceted nature of child maltreatment, and will identify and promote approaches that include improved prevention and intervention, coordination and collaboration, national data collection, research and policy development, promotion of community awareness and community capacity building. We will work toward improved early intervention and enforcement in our communities. We will strive to provide treatment services to abusers, and will continue to provide education and information about child maltreatment in support of professional training. We will also continue to promote positive parenting, including non-physical means of discipline. An awareness and understanding of the rights of the child has the power to reduce child maltreatment by increasing respect for the child's dignity and physical integrity.
 - (b) Out-of-home care and adoption
126. Parents, and legal guardians where designated, have the primary responsibility for the care, nurture, supervision and protection of their children. However, when families are unable to care for or keep children safe, the state has the responsibility to intervene. Since the early 1990s, the number of children coming into the care of the state has been increasing.
127. Child and family welfare services are mandated within provincial and territorial statutes. These mandated services may be provided by agencies of the province or territory or by contracted service providers. Community-based organizations also provide a wide range of child welfare services, and play a key role in supporting children and their families. Partners are committed to ensuring the health, safety and well-being of all children. We will work toward a multi-sectoral and culturally sensitive system of safeguards for protecting children, including but not limited to family supports, out-of-home care options and adoption.
128. We in Canada recognize that an effective child welfare system incorporates legislation, policies and programs, based on principles that have been developed to ensure that the well-being, rights and best interests of the child are identified and protected. We will continue to consider a broad range of placement and reunification options, and strive to make timely decisions that emphasize permanency and continuity to meet the needs of each individual child. We will respect the resiliency of children and their capacity to form secure attachments. We will continue to recommend supports for those in out-of-home care, as well as adequate assistance for their transition to adulthood. We will also continue to identify effective child welfare research and prevention programs to inform policy and practice.
129. For many couples and individuals wishing to raise families, adoption is a desirable option both for them and for the children they adopt. We must always ensure that the best interests of the child is a paramount consideration in adoptions and, where appropriate and available, the child will be able to obtain information relating to his or her genetic background if medically necessary. We must also ensure that adoptions involving a change in country of residence are in the best interest of the child and comply with the Convention on Protection of Children and Cooperation in Respect of Intercountry Adoption (the Hague Convention on Intercountry Adoption) and all other applicable provincial/territorial/federal laws.
 - (c) Violence, bullying and other forms of intimidation
130. The issue of violence, bullying and other forms of intimidation in schools, communities and society at large is receiving increasing attention. These types of aggression can take many forms, including physical, verbal, social and sexual, and have negative consequences both for those who are victimized and those who are perpetrators. Sometimes, specific populations of children are targeted such as members of ethnocultural groups and those who are or are perceived to be lesbian, gay, bisexual, or transgendered. All children have a right to feel and to be safe.
131. We in Canada are committed to taking action to prevent violence, bullying and other forms of intimidation, whether committed by individuals or gangs, and to intervene effectively when they occur. By increasing knowledge and awareness we will bring attention to the damage such actions causes children. We will also promote and model a culture of respect for all children and strive to create environments that are safe, responsive and free from discrimination.
132. We will identify effective school- and community-based prevention and intervention strategies, working toward changing the climate in which aggressive actions take place so that the norms of behaviour become more respectful of both children and adults. We will also promote diversity and increase understanding about social inclusion. Our strategies will be multi-dimensional, addressing the concerns of the individuals who are victimized, as well as those who perpetrate aggression or witness it.
 - (d) Youth justice
133. Although the overall crime rate for young people has been declining since the early 1990s, young people's involvement in crime and the way Canadians respond to it remain significant issues in Canada. The majority of crimes committed by young people are non-violent property offences. Only a small number of young people are involved in serious and repeat crimes, such as drug trafficking or aggravated assault.

134. We in Canada will continue efforts to prevent the involvement of young people in crime. We will strive to create an equitable youth justice system that protects society at large while upholding the rights of young people who commit crimes, and the rights of children who witness or are victimized by these crimes. In response to the evolving capacities of young people, we will strive to provide clear and coherent principles for decision-making around youth justice issues. We will work toward improved sentencing and timely interventions for young people to ensure that responses are both meaningful and sufficient for the offences committed. We will encourage alternative processes, like conferences, that allow youth greater voice in shaping decisions that affect them and their peers. We will strive to reduce the high rate of incarceration and support the effective rehabilitation and reintegration of young people within their communities.

135. Partners will work collaboratively to improve the youth justice system. We in Canada will continue to support crime prevention through social development to prevent and reduce crime and victimization among young people, addressing the underlying factors, and promoting school- and community-based initiatives. We will make a clear distinction between serious and violent offences and less serious offences, and aim to address less serious cases effectively outside of the formal court process.

136. In our efforts to respond to young people who commit crimes, we will link the seriousness of the intervention with the seriousness of the response, emphasizing timely intervention, meaningful consequences, restorative approaches, cultural relevance and community involvement. We will use the least restrictive controls possible to maintain the safety of communities while reconciling offenders with communities and victims. We will provide supports to children who witness or are victims of crime by creating safe, responsive environments to facilitate their testimony, and by helping them cope with the impacts of their experience. Where possible we will share our youth justice model with other countries through technical assistance.

(e) Violent and harmful content in the media

137. The relationship of today's children with the media is particularly complex. Exposure to mass media (i.e., television, movies, video and computer games, the Internet, music lyrics and music videos, newspapers, magazines, books, advertising, etc) presents both risks and benefits for children. Concerns about media include the impact of media violence and stereotyping, especially racial and gender stereotyping, on children's behaviour; the fact that certain types of sexual conduct as well as the use of tobacco, alcohol and illicit drugs are normalized, even made glamorous; advertising that is targeted; commercial exploitation of young children through the Internet; and problems related to the excessive amount of time children spend with the electronic media.

138. In order to be functional in the world today, children need to be media aware and have the critical thinking skills to read and understand all the messages that are informing, educating, entertaining and selling to them everyday. Parents and teachers in Canada have a crucial role to play in helping children sort through the positive and negative aspects of media in our society. Children whose parents monitor their TV watching and who discuss media content and images with them are more likely to be aware of the risks associated with the media and less vulnerable to manipulation. Research suggests that many children in Canada would welcome more adult involvement.

139. We in Canada will strive to reduce the amount of violent, sexualized and harmful representations in the media to which children are exposed and build understanding in the public of their potential impact on children's healthy development. We will continue to develop ratings for violent, sexualized and harmful content in the media, and work toward improved enforcement of age restrictions in the sale of media products. With partners, we will develop monitoring guidelines and resources addressing the effects of violent, sexualized and harmful images on children, and promote and encourage alternative, positive forms of entertainment. We will work toward improved protection against all forms of exploitation on the Internet. We will encourage media responsibility and support media awareness and consumer literacy.

(f) Immigrant, refugee and asylum seeking children

140. Canada provides protection to and welcomes thousands of people every year. We in Canada are committed to building a stronger nation by fostering welcoming communities for immigrant children and their families who choose to make Canada home, and by offering a safe environment to people of any age who are displaced and persecuted, including those seeking asylum and refugees selected abroad.

141. We in Canada all have a part to play in welcoming newcomers into our communities. As a fundamental expression of our humanitarian ideals and values of inclusion, respect for diversity and tolerance, we will continue to provide support and protection to immigrant and refugee children and their families, and facilitate the reunification of refugee children with their family members in Canada.

142. We will continue to work with partners both domestically and internationally to assist children and families who have been granted Canada's protection, through resettlement to Canada and other assistance after arrival. Persons seeking Canada's protection from within Canada are entitled to a fair and impartial determination process in Canada and to other support as appropriate while they are in this country. We will strive to develop a consistent national policy for the reception and care of separated children who have made refugee protection claims in Canada. We will continue to provide settlement, adaptation and integration assistance to immigrant children and their families who have chosen to come to Canada. Together, we will work to ensure that all newcomers who are granted the right to remain in this country, including children, are able to participate fully in Canadian life.

(g) Sexual exploitation and trafficking

143. We in Canada recognize that all forms of sexual exploitation of children, including within the family, for commercial purposes or for consideration, must be effectively criminalized and penalized both within Canada and abroad. The Canadian Criminal Code identifies as criminal activities various forms of child sexual exploitation. These include child

pornography, child sexual exploitation on the Internet, child prostitution, and child sex tourism. Canada has introduced a human trafficking offence with very significant penalties in its Immigration and Refugee Protection Act to deter international trafficking in children. Canada has signed the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography, ratified the International Labour Organization Convention 182 concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour. Canada was active in the negotiation of these instruments and we will encourage other countries to ratify them so that the international benefits arising from their implementation may be realized. Worst Forms of Child Labour Convention (ILO C182 Worst Forms of Child Labour Convention) (including the use, procuring or offering of a child for prostitution, for the production of pornography, for pornographic performance, for illicit activities, work which is likely to harm the health, safety or morals of children), and ratified the United Nations Convention against Transnational Organized Crime and its accompanying protocols, one of which is the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children

144. We are committed to working in Canada and with the international community to protect children from all forms of sexual exploitation, including sexual abuse, trafficking and abduction for sexual purposes. We will continue to support research on the issue in Canada, its consequences domestically and abroad, and its underlying risk factors, such as poverty, social exclusion and gender inequality. Partners will identify and promote improved prevention strategies that address the vulnerability of children, client demand and the predatory nature of the exploiters, as well as strategies to facilitate the recovery and social integration of child victims. The sexual exploitation of children is child abuse. We will raise awareness in Canada about the abusive nature, the illegality and the harmful consequences of child sexual exploitation and the trafficking of children, and support similar efforts internationally, including in developing countries and countries in transition. Internationally, we will focus on the sexual exploitation of children in areas of armed conflict and address the responsibility of both combatants and peacekeepers.
145. In addition, we will strive to enhance information-sharing mechanisms, both internationally and domestically. We will continue to work with our international partners to develop and implement strategies to prevent the criminal use of information technologies for the purposes of child pornography, the luring of children for sexual purposes, child prostitution, child sex tourism and the sale of children. Canada will continue to implement all international agreements to which it is a party, as well as review and propose legislative amendments as necessary to further protect and facilitate the testimony of children and other vulnerable persons, and witnesses, and increase penalties for offences against children.
146. Canada will work to strengthen the capacity of law enforcement and border officials to identify and prevent trafficking into Canada. We will provide gender and age-sensitive process and training support to officials so that they are better able to protect trafficking victims and effectively prosecute their traffickers. We will develop integrated policing models for law enforcement to assist with investigations of child pornography. We will also continue to work with international partners to develop and implement an international database of child pornography images to assist with victim identification and suspect location.

International priorities

(h) Combating child labour

147. Canada considers exploitative child labour a violation of the rights of the child. According to article 32 of the Convention on the Rights of the Child, child labour can be harmful to the child's health, or physical, mental, spiritual, moral or social development, depending on the child's sex, age, and developmental status, as well as the type and amount of work being performed. The worst forms of child labour include forced, bonded or slave labour, sexual exploitation, child soldiering, the use of children for illicit activities such as drug trafficking, and work likely to harm the health, safety, or morals of children. Non-harmful, age-appropriate work that does not interfere with a child's education can be beneficial to girls and boys by giving them an income, a sense of accomplishment, and work-related and social skills that will be of use to them in their future lives.
148. Canada is committed to preventing the exploitation of boys and girls and will continue to work to prevent and end harmful child labour. Efforts will also be made to support working children to gain the knowledge, tools and opportunities they need to achieve their potential and to participate as full members of their communities.
149. Canada will help address the issue of harmful child labour through support to poverty alleviation, investments in primary education, and increasing the productive capacity of families, especially women. Canada will address child labour in the context of trade liberalization, through labour cooperation agreements, technical assistance and cooperative activities. Canada will also help meet immediate needs of girls and boys who work by supporting their access to education and health care, as well as their participation in the design, implementation and monitoring of interventions meant to benefit them. Canadian companies can help address the issue of child labour through adherence to voluntary corporate social responsibility standards, such as those set out in the OECD Guidelines for Multinational Enterprises in their operations abroad and through the development of specific codes of conduct and management commitments against the use of child labour. Finally, Canadians can promote international awareness of the Convention on the Rights of the Child and the ILO C 182 Worst Forms of Child Labour.
150. For those under the age of 18 in Canada, we will work with partners to ensure that conditions and hours of work are appropriate, and that children are well protected.

(i) Protecting marginalized groups

151. The children most marginalized by society often experience violations of their rights through exploitation, abuse and discrimination. Marginalized children include, among others, those affected by armed conflict, exploited child labourers, sexually exploited children, children orphaned by AIDS, street-involved children, children with disabilities,

children facing discrimination because of their ethnic or religious identity, race, gender or sexual orientation, and children in conflict with the law or in institutional care.

152. Canada will strive to promote and support special protection measures for children internationally, particularly in developing countries and countries in transition, in order for them to attain the full enjoyment of their human rights. We will continue to contribute to the development and implementation of international standards to address the abuse, exploitation and discrimination faced by marginalized boys and girls. We will continue to raise awareness of child protection issues and advocate in Canada and in relevant international fora for special protection measures for these children. We will support research about the reality of these children's lives. As well, we will work toward building the capacity of individuals and organizations working with these children through training, development and disseminating resources, and networking. We will promote a holistic approach, founded upon the Convention on the Rights of the Child that respects children as agents of social transformation.

(j) Protection from armed conflict

153. Internationally, millions of children are killed, injured, displaced and scarred both physically and psychologically by the brutality of armed conflict. The protection of children in such circumstances, including the protection of their security and rights, is a key component of Canada's foreign policy and of our international assistance and programming. Internationally, Canada is recognized as a leader with regard to children's rights and children in armed conflict. This includes Canada's strong representation in multilateral and regional organizations, constructive dialogues with other states and programming on the ground.
154. Canada will continue to make the protection of war-affected children and their communities (including refugee and internally displaced children) and the protection of their security and rights a foreign policy priority. These efforts will be informed by an understanding of how girls and boys experience armed conflict differently, and the importance of involving conflict-affected children in the design, implementation and evaluation of programmes undertaken for their benefit. In our work to protect children from the impact of armed conflict, we will take action to stop the flow of small arms to forces that use them to abuse children. We will also ensure Canada's compliance with international humanitarian law and human rights law (such as the Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflicts). We will continue to work actively in support of resolutions and reports from the United Nations Security Council and General Assembly that call on the United Nations and Member States to take effective action in incorporating the rights and well-being of children in armed conflict in their policies and programs. Beyond these fora, we will continue to encourage regional and country-specific approaches to better protect conflict-affected boys and girls. We will also encourage agencies involved in humanitarian, peace-building and development work to integrate the rights of the child into their programming.
155. We will continue to support integrated efforts to address their needs including on issues related to: the prevention of military recruitment of girls and boys, and their demobilization and reintegration; the special protection needs of refugee and displaced children (including advocating for enhancing their access to legal and physical protection); access to education, vocational training and conflict resolution training; family reunification; health care, including sexual and reproductive health; psycho-social rehabilitation; sexual and gender-based violence; support for the inclusion of children in peace processes and agreements; and improving the sensitivity to the needs of children reintegrating and returning to post-conflict situations.

4. Promoting Education and Learning

156. The Convention on the Rights of the Child sets out the following aims for education: Education should be directed toward developing the child's personality, talents and mental and physical abilities to their fullest potential, at the same time as fostering a respect for his or her 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 originates, and for civilizations different from his or her own. Education should also prepare children for responsible life in a free society, in a spirit of understanding, peace, tolerance, equality of sexes, and friendship among all peoples, ethnic, national and religious groups and persons of indigenous origin. Finally, education should develop an understanding of human rights and fundamental freedoms, as well as respect for the natural environment.
157. The aims of education throughout Canada are fully consistent with the principles of the Convention on the Rights of the Child. As a society we place a high value on the importance of education for all children. While formal schooling is crucial and can be received in a variety of settings (such as in independent schools or at home), education and learning also refers to the broad range of life experiences and learning processes that enable children, individually and collectively, to develop their personalities, talents and abilities, so as to live a full and satisfying life within society. Parents, community-based organizations, child care services and schools, family resource centres, volunteers and community members all play a role in providing learning opportunities.

Priorities for action

(a) Quality learning

158. While a child's first educator is the family, as children grow, education and learning take place in other environments, including at school, in the community and among peers. These environments contribute to the development of the child's personality, talents, mental and physical abilities, moral development and spiritual well-being. Focusing on the quality of the learning environment and on teaching and learning processes and programs is crucial to promoting quality education and learning.
159. We in Canada will continue to ensure quality learning for children regardless of where they live and the particular challenges they face. This will involve learning environments that engage young people in their learning while adapting to their learning styles, unique cultures and needs. We will continue to foster and promote learning environments that are safe, accessible, supportive and caring, and based on the principles of respect, diversity and

inclusion. Working together, we will build on individual, family and community assets, strengthening their capacities to provide quality-learning opportunities. We will also continue to incorporate new learning methods that involve technological resources and build media awareness, while emphasizing the importance of arts education from early childhood. Promoting quality learning through various means, we can continue to ensure that all children develop the knowledge and skills they need to become full participants in the larger society.

(b) Arts and culture

160. Research has demonstrated that participation in artistic and cultural activities is a vital part of healthy child development. Children need opportunities for self-expression and play, and thrive when they get them. Through participation in the creative processes in a variety of media, including technology, children experience alternative ways of knowing and develop their imaginations, ideas, observational capacities and feelings. The benefits of creative activities throughout childhood have been shown to include improved academic performance, improved health and social skills, improved higher order thinking skills and reduced involvement in crime.
161. Artistic and cultural activities also play a key role in engaging children in communities. Small neighbourhood art centres can provide important entry points to arts programs. Children in Aboriginal communities that are rural or remote respond enthusiastically to such programs when facilities are available. Spaces designed for older children who are living in conditions of risk, including street and homeless children, can support their transition back into the community. As the cultural sector comprises one quarter of the Canadian workplace, art and creative centres can also play a key role in assisting with résumé and portfolio building to improve access to education and future employment.
162. We will increase awareness of the benefits of the arts and of cultural activities for children. We will increase opportunities for community-based involvement in artistic and cultural programs. We will encourage artists and arts organizations to continue to play an important role in promoting the value of the arts and developing relationships with children, parents, families and teachers in formal and informal settings, as well as performance and exhibition venues. Our strategies will be aimed at ensuring that programs are holistic in their approach and socially inclusive. We will encourage the training and capacity building of creative artists and facilitators, as well as collaboration, networking and sharing of resources among all levels of government, arts councils and arts community organizations, cultural and heritage institutions and professional artists.

(c) Human rights education and global citizenship

163. Respect for human rights and fundamental freedoms are core Canadian values. These rights, as defined in the Convention on the Rights of the Child and in the Canadian Charter of Rights and Freedoms, affect not only children but also those who are responsible for them. We are committed to educating Canadians about how these rights and freedoms affect their lives. By helping children and other partners to understand the nature of human rights, we will increase their awareness of the rights and responsibilities of our shared citizenship and of the problems created by discrimination and intolerance.
164. We will continue to ensure that people in Canada have opportunities to gain awareness and understanding of the rights and responsibilities of citizenship. By disseminating and promoting education on the Convention on the Rights of the Child, we will strive to make the principles and provisions of the convention more widely known. By using approaches that promote mutual respect, we will work to inform and engage children and youth, teachers, parents and other who work with children, and audiences who may not normally have easy access to human rights materials. Further, we will strive to use rights-based and child-development perspectives in policy and programming, both nationally and internationally.
165. Human rights education also supports peace education, which entails both peace-building and training in conflict resolution. We will also strive to enhance children's understanding of key global issues and empower them to take informed action as global citizens by enabling them to connect with children in other parts of the world through the Internet and other media, as well as, personally, through international youth exchanges. We will increase awareness of international development among children and develop appropriate educational tools.

(d) Canadian culture and national identity

166. All children in Canada have the right to feel proud of their citizenship and national identity. Whether citizens by birth or by choice, children must be afforded every opportunity to learn about the history and geography of Canada, our common culture and values, how we govern ourselves, and the responsibilities of citizenship. We will encourage an understanding of all the cultures that make up Canadian society, including the roles played by the English, French and the Aboriginal peoples in the history of our nation, and the contributions made by immigrants coming to Canada from all parts of the globe. We will encourage an understanding of the role that Aboriginal peoples play in enriching Canadian society and the difficulties that have been imposed on them. We will help children to acquire skills and competencies in both official languages as well as assist Aboriginal peoples to preserve and learn their native languages.
167. We will encourage our national cultural institutions whose mandates are to promote Canadian history, culture and values – the Canadian Broadcasting Corporation (CBC), Société Radio-Canada, the National Film Board, the Library and Archives of Canada, the Canadian Council for the Arts, the National Arts Centre and the network of national museums and art galleries – to continue to expand their outreach to children. We will support the development of learning materials in the field of Canadian Studies particularly in content areas that are considered to be underdeveloped or neglected. We will support programs that promote the understanding of the democratic process and elections and encourage citizen engagement. We will continue to help minority official language communities pass on their language to their young children and support the production, distribution and promotion of Canadian content that reflects our linguistic duality and cultural diversity.

(e) Environmental learning and sustainability

168. Despite the many successes of the environmental movement, much more needs to be done if our society is to understand the complexities of environmental conditions. Children in Canada are concerned about the quality of the air they breathe, the water they drink, safe food production, the recycling of waste, threats to biodiversity, climate change and the integrity of our ecosystems. They are looking for opportunities to learn about and engage in ensuring environmental sustainability both for Canada and the world.
169. We in Canada will support the United Nations Decade of Education for Sustainable Development beginning January 1, 2005, that resulted from the Johannesburg World Summit on Sustainable Development. We will acknowledge the concern and energy that children have for environmental issues and recognize their achievements. We will continue to provide children with opportunities to engage and contribute to improving the quality of the environment through activities such as the Youth Roundtable on the Environment. We will produce up-to-date educational materials to increase environmental learning and sustainability. Our efforts will support greater community awareness and capacity, social engagement and corporate action.

(f) Literacy

170. Literacy is much more than reading, writing and numeracy. It is the ability to understand, use and communicate information in all kinds of daily activities. Literacy touches virtually every aspect of our lives, but studies show that many people in Canada do not read or write well enough to participate fully in the workplace or in the community. Literacy is strongly linked to scholastic achievement among children, and to adults' success in finding and keeping employment. Improved literacy skills can influence individual growth and development, as well as contribute to economic well-being.
171. We in Canada are committed to improving the literacy skills of children, young people, and families through the continued promotion of literacy and lifelong learning as essential to successful participation in all aspects of life. Supporting community partners, we will continue to be actively involved in improving literacy skills through raising public awareness, sharing information, developing learning materials and advancing research to better understand the needs and challenges of creating a fully literate population. We will strive to ensure that families have the literacy skills to increase their knowledge, achieve their goals and contribute to the growth of the country.

(g) Trained and professional educators

172. The teachers and early childhood educators who encourage, enable and inspire children in Canada to learn play a tremendous role not only in the academic achievements of children, but also in creating the foundation for learning, which students carry throughout life. Professional, well-trained and caring teachers and early childhood educators are essential to the quality of the education children receive.
173. It is necessary for partners to work together to continue to ensure that teachers and early childhood educators are supported, valued and respected for the important professional role they play. We will work to understand the challenges educators face and improve our knowledge of the learning needs of children through better awareness and improved research. We will continue to recognize the efforts of outstanding teachers in all disciplines and early childhood educators who provide children with the tools to become good citizens, to develop and grow as individuals, and to contribute to Canada's growth, prosperity and well-being.

(h) Education for All: An international priority

174. Basic education is crucial to improving the quality of life of the individual and significantly contributes to human, social and economic development. It is an essential element of sustainable development and poverty reduction. Indeed, without education, national and international poverty reduction efforts will likely falter, leaving inequalities between and within countries.
175. Canada will continue to work with the international community to see that all children receive a basic education. Our efforts will be focused primarily through the global initiative Education for All, and three of the initiative's goals. First, we will strive to ensure that all children have access to, and are able to complete primary education that is free, compulsory and of good quality. Our efforts will include a special emphasis on those who are often marginalized, including indigenous children, children from minority groups, children in conflict areas, working children, and children with special needs and disabilities. Second, we will support progress toward gender equality, with a focus on ensuring girls' full and equal access to and achievement in basic education of good quality, by eliminating gender disparities in primary and secondary education. Finally, we will work to improve the quality of basic education, especially in literacy, numeracy, and life skills for learners of all age groups. We can help meet these goals by supporting various initiatives that aim to improve access to quality education, for example, through integrating strategies for gender equality, improving the quality of classroom instruction, promoting respect for human rights through education, promoting the use of information communication technologies as a tool to achieve better access, equality and quality in education, and heightening cooperation and coordination between education partners.

C. Building Momentum

A Call to Action

176. Supporting families and strengthening communities, promoting healthy lives, protecting from harm, and promoting education and learning are all attainable goals in Canada as long as we can rally the will and the resources.
177. While these goals will be so much harder to achieve in developing countries or countries in transition we must not lose heart. There is still a good deal that Canada can do. We can contribute through our foreign policy objectives of promoting global prosperity as well as security and urging respect for the international agreements to which Canada is a party especially the Convention on the Rights of the Child. Our Official Development Assistance will continue to

be directed to support sustainable development in developing countries, in order to reduce poverty and to contribute to a more secure, equitable and prosperous world.

178. In Canada we have already made substantial progress toward the promotion of children's rights and well-being. But, conscious that children in Canada cannot thrive in isolation from the children of the world, we also reaffirm our commitment to the broader goals of A World Fit for Children.

Partnerships and Participation

179. No government or individual acting alone can accomplish the goals of either A Canada Fit for Children or A World Fit for Children. As all sectors of society including governments, the private and voluntary sectors, as well as boys and girls have significant roles to play, we must now come together to pursue our common task of ensuring the rights and well-being of children in Canada and throughout the world.

180. And so, we call upon the following partners to participate in the implementation of the Plan of Action:

- (1) Children, including adolescents. The energy and creativity of children must be nurtured and engaged so that they can take an active part in shaping their environment, their societies, the world they live in now and the world they will inherit.
- (2) Parents and families. As they have the primary responsibility for the well-being of their children, they need to be supported in their role. The role of grandparents and Elders who have wisdom and experience to share should be recognized and valued.
- (3) Governments at all levels. Cooperation and continual dialogue among different orders and levels of government are essential.
- (4) Parliamentarians, members of provincial legislatures, members of Aboriginal governments and municipal councillors. They will be key to the implementation of the Plan of Action through adopting necessary legislation, designing regulations, and raising awareness about the priority of children's issues.
- (5) Civil society. The voluntary sector, community-based organizations, youth serving agencies and professional associations, as well as youth driven organizations, are knowledgeable advocates for children and their rights, and have a key role in promoting and creating environments conducive to their health and well-being.
- (6) The private sector. Business organizations have a unique contribution to make by adopting and adhering to practices that ensure family-friendly work environments and by demonstrating social responsibility.
- (7) Religious, spiritual and cultural leaders, and Aboriginal Elders. Guardians of the spirit, we need their wisdom and inspiration.
- (8) Academics and researchers. We need them to enrich our knowledge of child development, to help us understand the complex interaction of children and society, and to inform best practices.
- (9) Teachers, early childhood educators, child and youth care workers, foster parents, social workers, coaches, police and correctional workers and others who work directly with children. Since they are in day-to-day contact with children, their influence is vast.
- (10) Health care providers. Paediatricians, family physicians, specialists, nurses and other professionals play a critically important role in promoting healthy lives for children.
- (11) The media and their organizations. We need them to help us raise awareness about the importance of children and families and the challenges they may confront. We also need them to be attentive to their influence on children.
- (12) Artists, writers and musicians. Because they understand the role of the imagination, they can enhance the capacity of children to make of the world they know, the world they dream of.

181. In order to respond to our international challenges, we will continue to work with regional and international organizations, particularly those in the United Nations family, the Bretton Woods institutions and other multilateral agencies. Among our most important partners are international non-governmental organizations as well as Canadian ones focused on international development that engage on the ground with local communities and work so effectively for and with children.

Keeping on Track

182. At the United Nations Special Session on Children, it was the explicit aim of Canada to successfully integrate language into A World Fit for Children that reinforced the importance of the active participation of children. The Government of Canada also ensured that, wherever possible, the language of the declaration and plan of action referred to the promotion and protection of the rights of the child, especially those of the most vulnerable children.
183. In the spirit of these efforts, we in Canada reiterate our commitment to the fulfilment of the goals and aims of A World Fit for Children, and of the goals set out in this National Plan of Action entitled A Canada Fit for Children, secure in the knowledge that, as with the 1990 World Summit for Children, progressive implementation will bring us closer to a world that is fit for children, and for us all.
184. A Canada Fit for Children represents a roadmap to guide Canada's collective efforts for and with children; a call to action that identifies strategies to which everyone in Canada can contribute. We are committed to taking the necessary measures to implement Canada's national plan of action for children and to reporting the results to the United Nations. We will continue to work with a wide range of partners and encourage their participation in activities

that will further the implementation of this plan. All partners will need to chart their own paths using the United Nations Convention on the Rights of the Child as a guide. By regularly reviewing our respective actions, by keeping abreast of major policies and activities related to children, by collecting data, and by preparing reports, Canada will be able to assess progress toward our goals at the same time as we enhance the implementation of our obligations under the Convention. We acknowledge that progress will take time, but our commitment will be sustained and we will persevere because we owe to our children the best we have to give.

V. GOVERNMENT OF CANADA INVESTMENTS IN AND COMMITMENTS TO CHILDREN

185. Over the last decade, the Government of Canada has made a number of substantial investments in and commitments to children in Canada and in the world. The examples given below, with their signposts and milestones, are intended to guide us on our way forward.

A. For Canada's Children: To support the three key conditions that have been identified as enabling healthy child development: adequate income for families with children; effective parenting within strong and cohesive families; and supportive and inclusive communities.

1. Signpost ➔ Toward an adequate income for families with children

Milestones

The Canada Child Tax Benefit (CCTB) is a tax-free monthly payment and is the main federal instrument for the provision of financial assistance for families with children. The CCTB has two main elements:

A base benefit for low- and middle-income families that includes a supplement for children under the age of seven. Currently, approximately 3.2 million Canadian families with 5.7 million children benefit from the CCTB base benefit, which is over 80 percent of families.

The National Child Benefit (NCB) supplement, which provides additional assistance to low-income families with children. The NCB supplement is provided to 40 percent of Canadian families with children. In 2002-03, about 1.5 million families with 2.7 million children received the NCB.

The NCB supplement is the federal contribution to the National Child Benefit (NCB) initiative, under which federal, provincial and territorial governments act together to reduce child poverty while promoting parents' attachment to the workforce. Introduced in 1998, the NCB is a partnership among federal, provincial and territorial governments (excluding Quebec) and includes a First Nations component, which provides income support, as well as benefits and services, to low-income families with children.

As their contribution to the NCB initiative, provinces, territories and First Nations also invest in supports to low-income families with children in five key areas: child benefits and earned income supplements, early childhood services and children-at-risk services, child/day care, supplementary health benefits, and other benefits and services.

The Child Disability Benefit (CDB), introduced in 2003 as a supplement to the CCTB, targets benefits to children with a severe and prolonged mental or physical impairment in low- and modest-income families.

Investments

2000: The CCTB was fully indexed to the cost of inflation in 2000. As of July 2000, the maximum annual CCTB benefit (including the NCB supplement) for a first child was \$2,081, \$1,875 for the second child, and \$1,875 for each additional child. Total CCTB benefits provided to Canadian families with children were \$7 billion for the 2000 CCTB program year. A commitment was made to add 2.6 billion a year to the CCTB by 2004.



2003: As of July 2003, the maximum annual CCTB benefit (including the NCB supplement) was \$2,632 for a first child, \$2,423 for the second child, and \$2,427 for each additional child. Total CCTB benefits provided to Canadian families were \$8.4 billion for the 2003 CCTB program year. The 2003 Budget announced a commitment to provide a \$965-million-per-year increase in CCTB by 2007.



2007: As of July 2007, the maximum annual CCTB benefit (including the NCB supplement) is projected to reach \$3,243 for a first child, \$3,016 for the second child, and \$3,020 for each additional child. Total CCTB benefits provided to Canadian families with children will be over \$10 billion a year for the 2007 CCTB program year.

2004: For the 2004 program year, the maximum CDB benefit will be \$1,653, which will be provided to eligible families with net incomes under \$35,000. Modest-income families with net incomes between \$35,000 and approximately \$50,000 will receive partial benefits. It is estimated that the CDB will provide \$50 million to about 40,000 families annually.

2. Signpost ➔ Toward effective parenting within strong and cohesive families

Milestones

Under the Federal/Provincial/ Territorial Early Childhood Development (ECD) Agreement, announced in September 2000, the Government of Canada is helping to support provincial/territorial investments in early childhood development programs and services.

Through the Multilateral Framework on Early Learning and Child Care, announced in March 2003, the Government of Canada is supporting provincial and territorial investments in early learning and child care. The 2004 Budget announced that the Government of Canada will provide additional funding under the existing Multilateral Framework in 2004-2005 and 2005-2006.

As a complement to the Multilateral Framework, the 2003 Budget announced \$35 million over five years for early learning and child care for Aboriginal children, primarily those living on reserve. This investment was enhanced by a further \$10 million announced in the 2004 Budget.

The Employment Insurance Maternity and Parental Benefits provide temporary income replacement for up to one year while a new parent stays home with their newborn or newly adopted child. Due to the enhancement of the benefits, from 2000-02 the number of maternity claims increased by almost 10 percent and the number of parental claims increased by 18 percent. For fathers, that increase was nearly 80 percent.

The Compassionate Family Care Benefit introduced in 2004 provides up to eight weeks of temporary income support, under the Employment Insurance program, for those who care for gravely ill family members.

The First Nations and Inuit Child Care Initiative supports culturally appropriate Aboriginal child care programming, including relevant cultural and language components, in First Nations and Inuit communities.

Milestones

Investments

2001-02: A Canada Health and Social Transfer (CHST) investment of \$300 million enhanced provincial and territorial early childhood development programs and services.



2002-03: A further investment of \$400 million was transferred to the provinces and territories.



2003-04: A further investment of \$500 million was transferred to the provinces and territories.



2004-05: A further investment of \$500 million will be transferred to the provinces and territories.



2005-06: A further investment of \$500 million will be transferred to the provinces and territories.

2003-04: An initial investment of \$25 million was transferred through the CHST to provinces and territories.



2004-06: Funding transferred through the CHST to provinces and territories to increase by \$150 million.



2008: With increased investments announced in the 2004 Budget total investment will now amount to \$1.05 billion over five years.

2000-01: An investment of nearly \$752 million supported approximately 176,000 maternity claims; and an investment of \$502 million supported 178,000 parental claims.



2002-03: An investment of \$859 million supported 193,000 maternity claims; and an investment of \$1.9 billion supported 196,000 parental claims.

2004-05: It is estimated that \$221 million will be invested under this initiative each year.

2000: An investment of \$41 million supported more than 7,000 children in 389 communities.



2002-03: Under the Federal Strategy on Early Childhood Development for First Nations and other Aboriginal children, annual investments were increased to \$50 million, to improve quality of existing spaces, and create new spaces.

Investments

Aboriginal Head Start On Reserve is an early intervention program for First Nations children (ages 0 to 6) and their families living on reserve.

Aboriginal Head Start Urban and Northern Communities (AHSUNC) is an early intervention program for First Nations, Inuit and Métis children and their parents living in urban centres and large northern communities.

The Canada Prenatal Nutrition Program (CPNP) is a community-based initiative that helps vulnerable pregnant women including those living in poverty, pregnant teens and women living in isolation or with poor access to services.

The CPNP First Nations and Inuit Component is a community-based initiative that provides support to First Nations women living on reserve and Inuit women.

The Community Action Program for Children (CAPC) funds community-based coalitions that establish programs and deliver services to meet the developmental needs of children under six living in conditions of risk.

The Child-Centred Family Justice Strategy was announced in 2002 to help parents focus on the needs of their children following separation and divorce.

The Family Violence Initiative and National Clearinghouse on Family Violence is led by Health Canada which coordinates 12 federal departments whose long-term goal is to reduce the occurrence of family violence in Canada through awareness and research.

2000-01: An investment of \$25 million supported programs and services for 7,000 children through the Aboriginal Head Start On Reserve program; and \$22.5 million supported programs and services for 3,200 children through the AHSUNC.



2002: Under the Federal Strategy on Early Childhood Development for First Nations and other Aboriginal children, annual investments were enhanced to \$46.5 million for Aboriginal Head Start On Reserve, and \$35.1 million for Aboriginal Head Start in Urban and Northern Communities.

2000-01: An investment of \$27.3 million supported programs and services for 34,000 women in 301 projects; and an investment of \$14.2 million supported programs and services for an estimated 7,500 First Nations and Inuit children in 6,000 families in about 550 projects.



2002-03: An investment of \$31 million supported programs and services for 44,000 women in 320 projects; and an investment of \$14.2 million supported programs and services for First Nations and Inuit children.

2000-01: An investment of \$59.5 million supported programs and services for 57,038 children and 47,234 parents in 409 sites.



2002-03: An investment of \$59.5 million supported programs and services for 66,468 children and 52,136 parents in an estimated 408 sites.

2003-08: An investment of \$163 million over five years includes \$68 million of funding to provinces and territories and non-governmental organizations in support of family justice services (such as mediation and parent education); \$47.3 M for continued expansion of Unified Family Courts; and \$47.7 M for implementation of reforms and federal activities.

An investment of \$7 million is made annually to the Family Violence Initiative.

Milestones

Criminal Code amendments were introduced relating to child protection:

The National Longitudinal Survey of Children and Youth (NLSCY) is a long-term study of Canadian children, which tracks their development and well-being from birth to early adulthood. The survey collects information about how a child's family, friends, schools and community influence his or her physical, behavioural and learning development.

Understanding the Early Years (UEY) is a national initiative that provides communities with information to enable them to make informed decisions about best policies and most appropriate programs for families with young children.

Under the Social Development Partnerships Program, early childhood learning and care investments promote the generation, dissemination and application of knowledge, innovative solutions and best practices as they apply to children and families; foster collaborations, partnerships and networks; and strengthen the capacity of organizations in the social non-profit sector.

3. Signpost ➔ Toward supportive and inclusive communities

Milestones

The National Crime Prevention Strategy (NCPS) was launched in 1998 with an emphasis on children, youth, women and Aboriginal peoples. The NCPS focuses on crime prevention through social development and community capacity building.

As a component of the NCPS, the RCMP National Youth Strategy focuses on community-based early intervention efforts that address the root causes of crime and victimization. Additionally, the RCMP National Aboriginal Policing Services Branch has developed an Aboriginal youth suicide prevention program.

Investments

2002: New child exploitation provisions target the luring and exploitation of children for sexual purposes through the internet; and amends the sex tourism legislation that makes it easier to prosecute Canadians who sexually assault children while abroad.



2004: New legislation has been tabled in the House of Common, which aims to safeguard children and other vulnerable persons from sexual exploitation, abuse and neglect through strengthening child pornography provisions, creating a new category of sexual exploitation, increasing maximum sentences, and facilitating the testimony of child victims and witnesses.

2000-01: Investments in the NLSCY and UEY totalled \$7.7 million.



2002-03: Investments in the NLSCY and UEY totalled \$8.5 million.



2004: The 2004 Budget announced \$14 million over two years towards a significant extension of UEY from 12 to 100 communities.

2000-01: Investments in early childhood learning and care projects were \$5.2 million.



2002-03: Investments in early childhood learning and care projects were \$5.2 million.

Investments

2000-01: An investment of \$13.8 million funded proposals that target children and youth.



2002-03: An investment of \$18.2 million funded proposals that target children and youth.

Milestones

The Youth Justice Renewal Initiative, launched in 1998, addresses prevention, meaningful consequences for youth crime, and rehabilitation and reintegration, to help youth return to their communities.

In 2003, the Youth Criminal Justice Act came into force replacing the Young Offenders Act. Federal funding supports the development of programs required to implement the “intensive rehabilitative custody and supervision” sentencing option of the Act.

In partnership with provinces and territories, Canada’s Social housing programs provide assistance to some 639,000 social housing units that benefit lower-income Canadians, including families with children, youth, people with disabilities, seniors and Aboriginal people.

In 1999, the Government of Canada launched the three-year National Homelessness Initiative (NHI) to help prevent and alleviate homelessness in Canada. This included the Supporting Communities Partnership Initiative (SCPI) that provides funding for local community groups to offer supportive services and facilities for the homeless. Funding for a range of existing federal programs was increased to address the needs of particularly vulnerable and/or over-represented groups within the homeless population, namely youth-at-risk, Aboriginal people and victims of violence. A number of programs, including the Residential Rehabilitation Assistance Program (RRAP), administered by Canada Mortgage and Housing Corporation (CMHC), received additional funding to support housing repairs on units occupied by low-income households. The RRAP program

for Persons with Disabilities offers financial assistance to improve the accessibility of dwellings occupied or intended for occupancy by low-income persons with disabilities, including families with disabled children. CMHC’s Shelter Enhancement Program (SEP) assists in repairing, rehabilitating and improving existing shelters and to assist in the acquisition or construction of new shelters and second stage housing for women, children and youth who are victims of family violence. The Surplus Federal Real Property for Homelessness Initiative facilitates the transfer of surplus federal properties to communities. Over the years, about 8,627 beds have been created, 399 food banks and soup kitchens have been enhanced or expanded, and 653 shelters have been improved. Another 50 surplus properties were transferred for low-income housing creating 212 affordable units.

Investments

2000-05: An investment of \$950 million over five years was negotiated with the provinces and territories to support the implementation of the new youth justice legislation, including an additional \$115 million in bridge funding.

2002: A federal investment of \$48 million over five years was negotiated with the provinces and territories to support the implementation of the intensive rehabilitative custody and supervision sentencing option of the Act.

2001: Federal funding of \$680 million over five years was allocated to the Affordable Housing Initiative (AHI) through cost-sharing agreements with the provinces and territories to increase the supply of affordable housing for low- and moderate-income households, including families with children. Matching contributions from provinces, territories and others could increase this investment to over \$1.36 billion.



2002-03: Estimated CMHC expenditures directed to off-reserve and on-reserve Aboriginal peoples was \$275.8 million. Under the On-Reserve Program, CHMC committed 997 new units on reserve with a subsidy over the next 35 years estimated at \$118 million; spent approximately \$105.5 million primarily to provide subsidy and renovation assistance for households on reserve; and housing renovation programs supported the repair of 1,375 houses.



2003: A new investment of \$320 million over five years is allocated to the AHI; an investment of \$128 a year (for a total of \$384 million over three years) extends the RRAP; and an investment of \$135 million a year (for a total of \$405 million over three years) funds the SCPI.



2007-08: Federal investments in the AHI will amount to \$1 billion.

Milestones

Under the **On-Reserve Housing Program**, approximately 1,000 units are constructed yearly, with a current portfolio of about 23,000 units.

Children's health and the environment, as a priority, was reinforced by the establishment of the Office of the Children's Environmental Health within Health Canada to better protect children from environmental threats.

The 2000 Voluntary Sector Initiative reinforces the Government of Canada's commitment to examine new ways of working together and strengthening the relationship between the voluntary sector and the federal government. The 2001 Accord between the Government of Canada and the Voluntary Sector spells out the values, principles and commitments that will underlie their future relationship.

The Official Languages Action Plan, announced in 2003, focuses on minority language and second language education in both English- and French speaking communities. In 2003, 2.6 million children – half of those attending primary and secondary schools in Canada – are learning English or French as a second language. Some 324,000 are in French immersion classes; and 24 percent of high school graduates know both official languages.

The Aboriginal Language and Culture Centre was announced in 2002 to help preserve, revitalize and promote the languages and culture of Aboriginal peoples, including Aboriginal children. This investment also supports the extension of the Aboriginal Languages Initiative. Currently, about 20 percent of Aboriginal peoples speak an indigenous language regularly. Three Aboriginal languages, Cree, Inuktitut and Ojibway, are thriving in Canada.

Cadets Program and Junior Canadian Rangers Program, administered by the Department of National Defence, is the largest federally sponsored youth program for young Canadians ages 12 to 18 who learn valuable life and work skills such as teamwork, leadership and citizenship.

Investments

2000-01: An investment of \$100,000 funded programming in the Office of the Children's Environmental Health.



2002-03: An investment of \$54.5 million was allocated to improve access to newer environmentally-friendly pesticides. Health Canada was mandated to consider the special vulnerabilities of children.

2001-05: An investment of \$94.6 million over five years is being allocated to the Voluntary Sector Initiative.

2003-08: Total investment of \$751.3 million is being allocated with the goal of doubling the number of high school graduates with working knowledge of both official languages.

2003-14: An investment of \$172.5 million is being allocated over 11 years.

2003-04: an annual investment of \$173 million supports 63,000 Canadian youth in more than 1,200 urban, rural and remote or isolated communities in Canada.

B. For the World's Children

In support of stronger international standards and the Millennium Development Goals.

4. Signpost ➔ Toward stronger international standards related to children

Since 2000, Canada has negotiated, signed, ratified or adopted the following international conventions, statutes, protocols and declarations that directly reference children:

- 2000 Winnipeg International Conference on War-Affected Children
 International Labour Organization Convention 182 concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour
 Rome Statute of the International Criminal Court
 Optional Protocol to the United Nations Convention on the Rights of the Child on the Involvement of Children in Armed Conflicts
 The Dakar Framework of Action on Education for All
- 2001 Optional Protocol to the United Nations Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography
 Yokohama Second World Congress against Commercial Sexual Exploitation of Children
 Durban World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance
- 2002 Protocol (to the United Nations Convention against Transnational Organized Crime) to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children
 Johannesburg World Summit on Sustainable Development (Rio+10)

The following declarations and conventions that will have a direct impact on children are currently in development internationally:

- United Nations Draft Convention on the Protection and the Promotion of the Rights and Dignity of Persons with Disabilities
United Nations Draft Declaration on the Rights of Indigenous Peoples
Hague Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Cooperation in respect of Parental Responsibility and Measures for the Protection of Children

5. Signpost ➔ Toward the Millennium Development Goals

At the Millennium Summit held in September 2000, all United Nations Member States adopted the Millennium Development Goals (MDGs) pledging to reduce poverty and improve the lives of humankind by 2015 as measured against baseline year, 1990.

- | | |
|--|---|
| 1. Eradicate extreme poverty and hunger | <ul style="list-style-type: none">• Reduce by half the proportion of people living on less than a dollar a day.• Reduce by half the proportion of people who suffer from hunger. |
| 2. Achieve universal primary education | <ul style="list-style-type: none">• Ensure that all boys and girls complete a full course of primary schooling. |
| 3. Promote gender equality and empower women | <ul style="list-style-type: none">• Eliminate gender disparity in primary and secondary education preferably by 2005, and at all levels by 2015. |
| 4. Reduce child mortality | <ul style="list-style-type: none">• Reduce by two-thirds the mortality rate among children under five. |
| 5. Improve maternal health | <ul style="list-style-type: none">• Reduce by three-quarters the maternal mortality ratio. |

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|---|---|
| 6. Combat HIV/AIDS, malaria and other diseases | <ul style="list-style-type: none"> • Halt and begin to reverse the spread of HIV/AIDS. • Halt and begin to reverse the incidence of malaria and other major diseases. |
| 7. Ensure environmental sustainability | <p>Goal includes:</p> <ul style="list-style-type: none"> • Reduce by half the proportion of people without sustainable access to safe drinking water. |
| 8. Develop a global partnership for development | <p>Goal includes:</p> <ul style="list-style-type: none"> • In cooperation with the developing countries, develop decent and productive work for youth. |

Milestones

International Assistance

Canada provides international assistance primarily through the Canadian International Development Agency (CIDA), whose mandate is to support sustainable development in order to reduce poverty and contribute to a more secure, equitable and prosperous world. CIDA's accountability framework includes the MDGs, the pursuit of which supports the well-being and rights of children.

Investments

2000-01: The International Assistance Envelope (IAE) totals \$2.5 billion.



2003-04: The IAE increased by 8 percent for a total of \$2.9 billion with the aim of doubling international assistance by 2010 (of which at least half is earmarked for Africa). This would result in an increase of the Official Development Assistance/Gross National Income ratio from 0.27 percent in 2002 to around 0.35 percent by 2010.



2004-05: The IAE increased again by 8% for a total of approximately 3.1 billion.



2005-06: The 2004 Budget announced another 8% increase in the IAE, which is expected to result in a total of approximately \$3.3 billion.

CIDA's Social Development Framework

In 2000, CIDA unveiled the Social Development Priorities: A Framework for Action, to strengthen social development programming in developing countries.

2000-05: An investment of \$2.8 billion over five years was allocated. CIDA's new framework targets four key areas: (i) health and nutrition for a total of \$1.2 billion; (ii) HIV/AIDS for a total of \$270 million; (iii) basic education for a total of \$555 million; and (iv) child protection for a total of \$122 million, including a \$2 million research fund. Gender equality is an integral part of all these priorities.



Milestones

(i) Health and Nutrition

In support of health and nutrition related MDG targets, CIDA works with many partners (including international organizations, UN agencies and governments) to improve health policies, programs and systems in areas such as nutrition, sexual and reproductive health, communicable and non-communicable diseases, and water and sanitation; and also to ensure these policies and programs are particularly responsive to the needs of women, girls and boys.

(ii) HIV/AIDS

In support of HIV/AIDS-related MDG targets, CIDA works with many partners (including international organizations and United Nations agencies and governments) to provide support to locally-led HIV/AIDS strategies including care, treatment and prevention, and support for HIV/AIDS orphans.

(iii) Basic Education

To meet Education for All goals, CIDA's programs focus on two MDG targets (universal primary education and gender equality) to ensure the equal access to quality education for boys and girls.

(iv) Child Protection

CIDA has committed to increasing its investment in children most vulnerable to abuse, exploitation and discrimination — children who require special measures to support the fulfillment of their rights, with a strategic focus on war-affected children and child labourers.

In 2004, Canada tabled legislation changes to the Patent Act and Food and Drug Act that will enable developing and least developing countries to access compulsory licences for generic versions of pharmaceutical products under patent in Canada.

New Partnership for Africa's Development (NEPAD)

Canada established the Canada Fund for Africa as part of Canada's support for the NEPAD and the G8 Africa Plan adopted at the June 2002 Kananaskis G8 Summit.

Investments

2000: Annual spending targets are \$152 million for Health and Nutrition; \$20 million for HIV/AIDS; \$41 million for Basic Education; and \$9 million for Child Protection.



2001: Annual spending targets are \$182 million for Health and Nutrition; \$22 million for HIV/AIDS; \$49 million for Basic Education; and \$10 million for Child Protection.



2002: Annual spending targets are \$203 million for Health and Nutrition; \$36 million for HIV/AIDS; \$82 million for Basic Education; and \$18 million for Child Protection.



2003: Annual spending targets are \$248 million for Health and Nutrition; \$62 million for HIV/AIDS; \$110 million for Basic Education; and \$27 million for Child Protection.



2004: Annual spending targets are \$275 million for Health and Nutrition; \$70 million for HIV/AIDS; \$150 million for Basic Education; and \$31 million for Child Protection.



2005: Annual spending targets are \$305 million for Health and Nutrition; \$80 million for HIV/AIDS; \$36 million for Child Protection; \$164 million for Basic Education.

2002: Commits \$500 million to the Canada Fund for Africa (as part of Canada's commitment of \$6 billion to Africa's development over the next five years). This includes the Africa-Canada Youth Programme, a \$30 million package over four years, which provides assistance to HIV/AIDS affected children and youth, and war-affected children; and provides support for Canadian-African youth exchanges focused on environmental issues.



2003: An additional commitment of up to \$100 million over five years will strengthen African-led strategies and programs for the care, treatment, support and prevention of HIV/AIDS.

Milestones

Debt Relief and Market Access for Developing Countries

Over the years, Canada has forgiven outstanding development assistance debt to the world's poorest countries. For example, Canada placed a moratorium on debt service payments from 11 reforming Heavily Indebted Poor Countries (HIPC) under the Canadian Debt Initiative in 2001.

Canada has also committed to ensuring that developing countries benefit from trade when it signed the World Trade Organization's (WTO) Doha Development Agenda in 2001.

Investments

2000: Canada has forgiven a total of 1.3 billion in outstanding development debt.



2003: Canada's total contribution to multilateral HIPC efforts through the HIPC Trust Fund, involving both the International Monetary Fund (IMF) and the World Bank, was over \$315 million.

Canada extends duty and quota free access to imports from 48 Least Developed Countries (of which 34 are in Africa) except for supply-managed agricultural products (dairy, poultry and eggs).

APPENDIX G: CIDA Child Friendly Version of the Convention

Convention on the Rights of the Child summary (copyright: 2004 UNICEF Canada)

Article 1: **Definition of a child.** *A child is recognized as a person under 18, unless national laws recognize the age of majority earlier.*

Article 2: **Non-discrimination.** *All rights apply to all children, and children shall be protected from all forms of discrimination.*

Article 3: **Best interests of the child.** *All actions concerning the child shall take full account of his or her best interests. The States shall provide the child with adequate care when parents, or others charged that responsibility, fail to do so.*

Article 4: **Implementation of rights.** *The State must do all it can to implement the rights contained in the Convention.*

Article 5: **Parental guidance and the child's evolving capacities.** *The State must respect the rights and responsibilities of parents to provide guidance for the child that is appropriate to her or his evolving capacities.*

Article 6: **Survival and development.** *Every child has the right to life, and the State has an obligation to ensure the child's survival and development.*

Article 7: **Name and nationality.** *Each child has the right to a name and nationality, to know his or her parents and be cared for by them.*

Article 8: **Preservation of identity.** *The State has an obligation to protect, and if necessary, to re-establish the child's identity. This includes name, nationality and family ties.*

Article 9: **Separation from parents.** *The child has a right to live with his or her parents unless this is not in the child's best interest. The child has the right to maintain contact with both parents if separated from one or both.*

Article 10: **Family reunification.** *Children and their parents have the right to leave any country or enter their own to be reunited, and maintain the parent-child relationship.*

Article 11: **Illicit transfer and non-return.** *The State has an obligation to prevent and remedy the kidnapping or holding of children abroad by a parent or third party.*

Article 12: **The child's opinion.** *Children have the right to express their opinions freely, and have their opinions taken into account in matters that affect them.*

Article 13: **Freedom of expression.** *Children have the right to express their views, obtain information, and make ideas or information known, regardless of frontiers.*

Article 14: **Freedom of thought, conscience and religion.** *Children have the right to freedom of thought, conscience and religion, subject to appropriate parental guidance.*

Article 15: **Freedom of association.** *Children have a right to meet with others, and to join or form associations.*

Article 16: **Protection of privacy.** *Children have the right to protection from interference with privacy, family, home and correspondence, and from attacks on their character or reputation.*

Article 17: **Access to appropriate information.** *Children shall have access to information from national and international sources. The media shall encourage materials that are beneficial, and discourage those which are harmful to children.*

Article 18: **Parental responsibilities.** *Parents have joint responsibility for raising the child, and the State shall support them in this.*

Article 19: **Protection from abuse and neglect.** *Children shall be protected from abuse and neglect. States shall provide programs for the prevention of abuse and treatment of those who have suffered abuse.*

Article 20: **Protection of a child without family.** *Children without a family are entitled to special protection, and appropriate alternative family or institutional care, with regard for the child's cultural background.*

Article 21: **Adoption.** *Where adoption is allowed, it shall be carried out in the best interests of the child, under the supervision of competent authorities, with safeguards for the child.*

Article 22: **Refugee children.** *Children who are refugees, or seeking refugee status, are entitled to special protection.*

Article 23: **Disabled children.** *Disabled children have the right to special care, education and training that will help them to enjoy a full and decent life with the greatest degree of self-reliance and social integration possible.*

Article 24: **Health and health services.** *Children have the right to the highest possible standard of health and access to health and medical services.*

Article 25: **Periodic review of placement.** *A child who is placed by the State for reasons of care, protection or treatment of his or her physical or mental health is entitled to have that placement evaluated regularly.*

Article 26: **Social security.** *Children have the right to benefit from social security including social insurance.*

Article 27: **Standard of living.** *Children have the right to a standard of living adequate for their physical, mental, spiritual, moral and social development. Parents have the primary responsibility to ensure that the child has an adequate standard of living. The State's duty is to ensure that this responsibility is fulfilled.*

Article 28: **Education.** *Children have the right to education. Primary education should be free and compulsory. Secondary education should be accessible to every child. Higher education should be available to all on the basis of capacity. School discipline shall be consistent with the child's rights and dignity.*

Article 29: **Aims of education.** *Education should develop the child's personality, talents, mental and physical abilities. Children should be prepared for active participation in a free society, and learn to respect their own culture and that of others.*

Article 30: **Children of minorities or indigenous populations.** *Children have a right, if members of a minority group, to practice their own culture, religion and language.*

Article 31: **Leisure, recreation and cultural activities.** *Children have the right to rest, leisure, play and participation in cultural and artistic activities.*

Article 32: **Child labour.** *Children have the right to be protected from economic exploitation, from having to participate in work that threatens their health, education or development. The State shall set minimum ages for employment and regulate working conditions.*

Article 33: **Drug abuse.** *Children have the right to protection from the use of drugs, and from being*

involved in their production or distribution.

Article 34: **Sexual exploitation.** *Children shall be protected from sexual exploitation and abuse, including prostitution and involvement in pornography.*

Article 35: **Sale, trafficking and abduction.** *The State shall take all appropriate measures to prevent the sale, trafficking and abduction of children.*

Article 36: **Other forms of exploitation.** *The child has the right to protection from all forms of exploitation prejudicial to any aspects of the child's welfare not covered in articles 32, 33, 34 and 35.*

Article 37: **Torture and deprivation of liberty.** *No child shall be subjected to torture, cruel treatment or punishment, unlawful arrest or deprivation of liberty. Capital punishment and life imprisonment are prohibited for offences committed by persons below 18 years of age. A child who is detained has the right to legal assistance and contact with the family.*

Article 38: **Armed conflicts.** *Children under age 15 shall have no direct part in armed conflict. Children who are affected by armed conflict are entitled to special protection and care.*

Article 39: **Rehabilitative care.** *Children who have experienced armed conflict, torture, neglect or exploitation shall receive appropriate treatment for their recovery and social reintegration.*

Article 40: **Administration of juvenile justice.** *Children in conflict with the law are entitled to legal guarantees and assistance, and treatment that promote their sense of dignity and aims to help them take a constructive role in society.*

Article 41: **Respect for higher standards.** *Wherever standards set in applicable national and international law relevant to the rights of the child are higher than those in this Convention, the higher standard shall always apply.*

Articles 42-54: **Implementation and entry into force.**