

Summary of the Committee on the Rights of the Child Concluding Observations to Canada, October 2003.

Canada's second report to the UN Committee on the Rights of the Child was presented in Geneva September 17th, 2003. In its deliberations of the report held October 3, 2003, the Committee noted its pleasure with the composition and responses of the Canadian delegation, but noted also that Canada's report was presented in a way that made it difficult for it to see the big picture. Based on the information presented in the discussion and report (and the shadow report of the Canadian Coalition of the Rights of the Child) the Committee commented as follows.

Canada's Overall Progress.

The Committee was pleased by the many initiatives taken by Canada since the previous report (1995). In particular they noted the National Children's Agenda, the National Child Benefit, the establishment of a Secretary of State for Children and Youth, the Federal-Provincial-Territorial Council of Ministers on Social Policy Renewal, the Social Union Framework Agreement, Bill C-27 amendment to the Criminal Code, Canada School Net, and Canada's Aboriginal Action Plan, *Gathering Strength*. The Committee also expressed its strong approval of the many programs and financial commitment of CIDA in assisting the rights of children to be respected in developing countries.

Major Concerns and Recommendations.

The Committee expressed its concern with the lack of adequate attention to some of the recommendations made in response to Canada's first report. It was particularly concerned that Canada is maintaining its reservations on articles 37 (separation of juvenile from adult offenders) and 21 (Aboriginal control over adoption), that there continues to be insufficient appropriate data collection, that the general principles of the Convention remain inadequately reflected in domestic law, that refugee children continue to face many difficulties, and that Section 43 of *Canada's Criminal Code* (which provides a legal defense for the use of corporal punishment) has not yet been repealed.

The following recommendations were made.

- (1). The reservations made to the Convention should be withdrawn. For article 21, the Committee recommended withdrawal through dialogue with Aboriginal communities.
- (2). Since significant laws and policies for children fall under provincial and territorial jurisdiction, and that there is provincial and territorial variation in implementation of the Convention, the federal government should ensure that provincial and territorial governments are aware of their Convention obligations and take measures to meet them.
- (3). To promote effective coordination and monitoring of the Convention across jurisdictions, there should be some federal structure or body who is specifically mandated to ensure equitable application of the Convention in Canada.
- (4). The following criteria should be adopted for Canada's National Plan of Action. It should be (a) rights-based and comprehensive, (b) target all children but give special

attention to more vulnerable groups including Aboriginal, migrant and refugee children, (c) include specified goals, time-tables, and division of responsibilities, (d) provide the necessary resources, and (e) include a monitoring mechanism.

(5). Ombudsman's offices responsible for children's rights, empowered with sufficient funding and independent status, should be established in provinces/territories where they do not exist, and at the Federal level.

(6). To ensure the equitable and effective allocation of resources, particularly with regard to children living in poverty, program evaluation studies should be conducted (e.g., the impact of the National Child Benefit System), and measures should be taken to ensure that children are not disproportionately affected by economic change. Budgetary allocations should be prioritized annually with clear statements on the amount and proportion of the budget (at provincial, territorial and federal levels) spent on children. In addition, NGOs who are working on dissemination of the Convention should be funded.

(7). Disaggregated data should be collected, analyzed and integrated on all those under 18 years of age for all areas covered by the Convention. There should be special emphasis paid to the most vulnerable (Aboriginal children, children with disabilities, abused and neglected children, street children, children in conflict with the law, refugee and asylum seeking children). These data should be used to evaluate and formulate legislation, policies and programs, for the implementation, resource allocation and monitoring of the Convention.

Other Considerations and Recommendations.

1. General Principles.

(a) *Non-discrimination.* The Committee noted a number of positive developments with regard to the principle of non-discrimination including the *Multiculturalism Act*, the *Employment Equity Act*, and the amendment to the *Criminal Code* that identifies racial discrimination as an aggravating circumstance. However, the Committee expressed concern about discrimination against Aboriginals and those of African and Asian descent, particularly when in custody, about expressions of prejudice in the media, and that children of migrants with no status have been excluded from the school system. It is recommended that there be further legislative efforts to integrate the principle of non-discrimination into all political, judicial and administrative decisions, and that there be public education campaigns to counter negative and prejudicial attitudes. The Committee requested Canada provide information in its next report on measures taken to promote cultural diversity, and in the follow-up to the Declaration and Programme of Action Adopted at the 2001 World Conference Against Racism, Racial Discrimination, Xenophobia and Related Intolerance.

(b) *Best interests of the child.* Although Canada generally has a good record in upholding the principle of the best interests of the child, the Committee noted that this principle remains poorly defined in some legislation, court decisions and policies. In addition, the Committee expressed concern at the lack of research and

training for professionals in this respect. The Committee, therefore, recommended that there be research and educational programs to allow a full understanding of the principle and thereby its application. The Committee recommended also that the principle be analyzed and applied to all programs, policies, practices and services that have an impact on children.

2. Civil Rights and Freedoms

The Committee commented on the article 7 right to identity. The Committee was pleased with the new *Citizenship of Canada Act* that allows for the acquisition of citizenship for children adopted abroad by Canadian citizens, and by the establishment of the First Nations Child and Family Service that provides culturally sensitive and community-based services to Aboriginal children and their families. The Committee recommended that Canada take further measures to resolve the situation of stateless children by facilitating birth registration and to applications for citizenship, and by ratifying the 1954 Convention relating to the Status of Stateless Persons.

3. Family Environment and Alternative Care

The Committee was pleased with Canada's progress, notably being a party to the 1980 Hague Convention on the Civil Aspects of International Child Abduction, and expressed concern with parental abductions, with regard to article 11, the illicit transfer and non-return of children abroad. The Committee recommended that Canada undertake international initiatives here including consideration of bilateral agreements and assistance through diplomatic and consular means.

4. Adoption

The Committee was concerned with provincial and territorial variations in adoption policies and legislation. First, The Hague Convention of 1993 on the Protection of Children and Cooperation in Respect of Intercountry Adoption, although ratified, is not taken into account in all jurisdictions. Second, not all provinces recognize the right of an adopted child to know his or her parents as described in article 7. The Committee recommended full implementation of the Hague Convention, and appropriate legislative changes where needed to ensure consistency with article 7 across all jurisdictions.

5. Abuse and Neglect

Although pleased with educative efforts on alternative forms of punishment, the Committee was extremely concerned that section 43 of the *Criminal Code* has not been repealed, thus continuing to allow a legal defense for corporal punishment. The Committee recommended full prohibition of all forms of violence against children, however mild, within family, schools and all other institutions in which children may be placed.

6. Health and Health Services

The Committee was concerned by jurisdictional variation in universality and accessibility of health care, particularly for children in rural, northern and Aboriginal communities. The Committee noted the disproportionately high rates of sudden infant death syndrome and fetal alcohol related disorders among Aboriginal children. The Committee

recommended measures be taken to ensure the same quality of health services in all areas with particular attention to the health needs of indigenous children and children in rural and remote areas.

7. Adolescent Health

The Committee expressed deep concern with the high mortality rate among the Aboriginal population, in particular the high rate of substance abuse and suicide among Aboriginal youth. It was recommended that high priority be given to research and identification of risk factors of youth suicide and to the implementation of supports, intervention and prevention programs.

8. Social Security and Child Care

Canada's recent initiatives to provide assistance to families (e.g., increased parental leave, tax deductions, child benefits, and programs for Aboriginal peoples) were noted, but concerns were expressed about the high costs of childcare, the lack of adequate spaces, and the lack of national standards for the provision of childcare. The Committee recommended that Canada identify the exact nature of the regional variations in childcare and their impact on children. The Committee recommended also that Canada formulate a strategy to ensure quality childcare is available to all children regardless of their economic or geographic status.

9. Standard of Living

Two problem areas were identified. First, the Committee expressed its concern with the extent of homelessness across Canada and recommended that as well as providing supports to homeless children, research be conducted to identify the causes of homelessness and the possible links between homelessness and child abuse, child prostitution and pornography, and trafficking in children. Second, the Committee expressed its concern with child poverty, particularly among single mother families, and recommended that Canada address the factors that are responsible for child poverty, as well as implementing programs and policies that ensure adequate resources for all families.

10. Education, Leisure and Cultural Activities

The Committee noted the excellent literacy rates and high level of basic education in Canada, and the numerous initiatives undertaken to improve education on reserves and at the international level. Concerns were expressed about children of migrants with no status being excluded from school in some jurisdictions, the reduction in education spending, the high rates of early school leaving among Aboriginal children, and the lack of availability of instruction in both official languages. Four recommendations were made. (1). Culturally sensitive education should be made available at the primary level for all children with particular attention to the most vulnerable children including those in rural areas, Aboriginal children, asylum seekers and refugees. (2). Children's rights and human rights education should be incorporated into school curricula in the different languages of instruction and teachers should have the necessary training for effective rights education. (3). The 1960 UNESCO Convention against discrimination in education should be ratified. (4). All forms of corporal punishment in schools should be banned and

children should be encouraged to participation in the formulation of school discipline policies.

11. Special Protections

- (a) **Refugee Children.** Although the Committee was pleased with the *Immigration and Refugee Protection Act* of 2002, four areas of continued concern were identified. These were an absence of (1) a national policy on unaccompanied asylum-seeking children, (2) standard procedures for appointing a guardian for these children, (3) a definition of “separated child” and lack of reliable data on asylum-seeking children, and (4) adequate training or consistent procedures in referring vulnerable children to welfare authorities. The Committee therefore recommended the following measures be taken to respond to these concerns. Canada should adopt and implement a national policy on separated children who are seeking asylum in Canada and ensure that there is a clearly specified process for the appointment of guardians. To ensure consistency with article 37, unaccompanied minors should not be detained. Policies and procedures should be developed to facilitate the return to country of origin of children who are found not to need international protection. All refugee and asylum-seeking children should have access to services such as health and education. Family reunification should be dealt with expeditiously.
- (b) **Protection of Children in Armed Conflict.** The Committee noted that Canada has made a declaration to the Optional Protocol and is expected to report on what measures have been taken to limit recruitment to those 18 years or older, and to review its relevant legislation.
- (c) **Economic Exploitation.** Although efforts have been to end economic exploitation at the international level, the Committee was concerned that no data were given for the domestic situation. In addition, the Committee was concerned that Canada has not ratified the ILO Convention 138 Concerning the Minimum Age for Admission to Employment. The Committee therefore recommended the ratification of this Convention, and a nation-wide assessment of working children that would allow the identification of any exploitive child labor in Canada.
- (d) **Sexual Exploitation and Trafficking.** The Committee noted the excellent record of Canada in promoting awareness of sexual exploitation and working toward its reduction (e.g., Bill C-27 in 1997, Bill C-15A in 2002). However, the Committee was concerned with the vulnerability of street children within Canada, particularly the disproportionate numbers of Aboriginal children who enter the sex trade as a means of survival. The Committee was concerned also with the increase of trafficked foreign children and women into Canada. Increased protections and assistance to victims of sexual exploitation were recommended.
- (e) **Street Children.** The lack of comprehensive information about street children was identified as a problem. Statistics from major urban centers indicate that a substantial percentage of homeless persons are children, that Aboriginal children are of particular risk of homelessness, and that poverty, abusive and neglectful parenting appear to be the primary risk factors. The Committee recommended that there be a comprehensive study to identify the causes of children living on the

streets, and to facilitate the identification of effective interventions and preventative strategies.

- (f) **Juvenile Justice.** Although encouraged by the new *Youth Criminal Justice Act* of 2003, the Committee expressed its concerns with the expanded use of adult sentences, the expanded access to youth records, the high rates of youth custody, the lack of separation of youth and adult offenders, and that public perceptions of youth crime are inaccurate and based on media stereotypes. The Committee recommended the following to promote greater consistency between Canada's juvenile justice system and the Convention (articles 3, 37, 39, and 40): remove the allowance for trying children as adults, ensure the views of the child are heard and respected in all cases, ensure full protection of the child's privacy, make significant reductions in the use of custody, and ensure children are always separated from adult offenders.
- (g) **Children of Minority or Indigenous Status.** The Committee noted that despite many initiatives, Canada's Aboriginal children disproportionately continue to experience difficulties in many areas. The Government was urged to continue its efforts to improve the life chances of Aboriginal children and to follow-up on the recommendations of the Royal Commission on Aboriginal Peoples.

12. Ratification of Optional Protocols to the UN Convention on the Rights of the Child

The Committee was pleased that Canada has ratified the Optional Protocol on children in armed conflict and urges the early ratification of the Optional Protocol on the sale of children, child prostitution and child pornography that Canada signed November 2001.

13. Dissemination of Report and Concluding Observations

The Committee recommended that Canada's second report and the responses to it be made widely available as a means of promoting both awareness of the Convention and debate about its implementation.

Canada's third and fourth reports to the UN Committee on the Rights of the Child are due January 11, 2009.

*Summary prepared by Katherine Covell, Vice-President,
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