



Putting Children First

Presentation to the Standing Senate Human Rights Committee
for Hearings on Canada's International Obligations in Regards to the Rights and
Freedoms of Children

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Introduction

World Vision Canada appreciates this opportunity to discuss with you the importance of strengthening measures to implement the Convention on the Rights of the Child (CRC) in Canada. This study is a timely follow-up to the release of the National Plan of Action for Children.

Canada has shown leadership in advocating for the rights of children in international assemblies, such as the UN Special Session on Children. Canada's continuing reputation as a leader in child rights will depend on how well we implement at home what we advocate in international arenas.

In keeping with this goal, we would like to present and speak to three main recommendations:

- World Vision recommends that Canada develop and adopt legislation to give the CRC the force of national law in Canada, including appropriate accountability mechanisms.
- In addition to compliance within Canada, World Vision recommends that all aspects of Canada's international relations, including international assistance, diplomacy, trade, and international financial policies, be in compliance with the CRC.
- World Vision recommends that Canada take a leadership role in advocacy to strengthen international accountability mechanisms for the CRC as the most effective tool to achieve

the objectives of *A World Fit for Children*, including the development of a complaints procedure similar to that of most other human rights treaty bodies.

As a Christian humanitarian agency, World Vision grounds its commitment to the rights of children in its conviction that all people, including children, were created by God with value and dignity and are called to share in the task of taking care of creation. More detailed explanations of our understanding of a Christian approach to child rights are available. At the same time, World Vision respects the role that other religions have also played in developing what has become a nearly universal understanding of the rights of children. As such, incorporating the rights of children into Canadian law can be done with respect for the diverse religions and cultures in Canada.

I. National legislation

New legislation that would clearly give the CRC the force of law in Canada would be the most effective way to demonstrate a strong commitment to the rights of children and ensure consistent implementation across all sectors and jurisdictions.

Many other international treaties, such as trade agreements and some other human rights treaties, are enacted through parallel Canadian legislation. It is important that children's rights have the same status. In the case of the optional protocols to the CRC on the involvement of children in armed conflict and sexual exploitation, Canadian legislation was introduced to give some of their provisions the force of law in Canada; certainly the CRC itself should have similar standing.

Given the current interest in coherence in our international policy framework and consistency between domestic and international policy, now is the time for the committee to propose that parliament draft legislation to give the CRC the force of national law. We recommend that this legislation be prepared in consultation with all key stakeholders prior to adoption, including active participation by young people.

National legislation is needed to comply with Article 4 of the CRC itself and Paragraph 31 (a) of a *World Fit for Children*, which explicitly call for States to put in place national legislation and other measures for the fulfillment of the rights recognized in CRC. National legislation would also make clear Canada's commitment to abide by the provisions of the Vienna Convention on the Law of Treaties, which stipulates that States Parties are bound to carry out their duties in good faith.¹

In Canada the CRC has functioned primarily as a statement of aspirations. It is more that that. The committee would do well to base its recommendations on the fact that

“...in its essence, the CRC is a legal document. While the CRC may contribute greatly in shaping values of both policy makers and society in general, ***the Convention's central objective was to establish a legal framework for the protection of children's rights.*** In addition, much of the initial impetus behind the push for a convention on child rights...was a desire to transform the aspirations of the 1959 Declaration on the Rights

¹ Vienna Convention on the Law of Treaties, Entered into force on 27 January 1980, in accordance with article 84(1). Article 26.

of the Child into a set of legal principles."²

The benefits of national legislation to enact the CRC would include the following:

1. National legislation would demonstrate our commitment to practice in Canada what we promote internationally.
2. The CRC takes a holistic approach to human rights, with due consideration for the rights and responsibilities of a broad range of actors. This makes it a particularly good tool for strengthening human rights in Canada and also abroad.
3. A national law would provide greater clarity about the priority to be given to such core concepts as "the best interests of the child." The need for clarity on such principles became abundantly clear in the discussions on a national policy on separated children. The government response to a proposed framework based on the "best interests of the child" was that this was only one among many factors and not necessarily a top priority in determining immigration policy. Legislation would reduce confusion on that score.
4. Legislation would reduce the potential for precedence to be set by court cases. Parliament, as representatives of the people, should take a leading role in establishing legislation to protect the rights of children. Legislation that is developed through a representative process is more likely to find broad acceptance than rulings that originate in court judgments, as we see in other matters of human rights. The CRC is being cited on an increasing basis in court judgments, with varying approaches to its interpretation. The process of adopting legislation would include deliberation and the development of greater consensus on interpretation, which would then give more clear guidance to courts at all levels.
5. Clear legal recognition of the rights of children would provide a healthy balancing factor in federal-provincial discussions, enabling the most vulnerable population to have a stronger voice in decisions that have direct impact on them. Policies affecting children are frequently caught up in disputes between the interests of federal and provincial governments, a context where it is easy to lose sight of the impact on children themselves. Legislation that would require all parties to pay greater attention to the rights of children could play an important role by providing a principled framework for resolving jurisdictional disputes.
6. Adoption of national legislation could contribute to more equitable treatment of children across the country. It could include provisions to ensure that all provincial, territorial, and municipal governments also legislate within the framework of the CRC,³ and put in place the necessary "safeguards to ensure that decentralization or devolution does not lead to discrimination in the enjoyment of rights by children in different regions."⁴
7. Mechanisms for accountability would be taken more seriously within an explicit national legal framework. When violations of the rights of children are pursued through domestic

² Todres, Jonathan. Emerging limitations on the rights of the child: the U.N. Convention on the Rights of the Child and its early case law. *Columbia Human Rights Law Review*, Vol. 30 no1 Fall 1998, P. 7. [Emphasis added.]

³ General Comment No.5: General measures of implementation of the Convention on the Rights of the Child (arts. 4, 42 and 44.6), Para.20

⁴ *Ibid*, Para.41

courts, the success of the case depends in part on the status of the CRC in the domestic law. As the committee is aware, the CRC, like other international treaties, is non-self executing in Canada. Given the lack of force of the CRC in Canada's domestic law, there are concerns that "the courts may be developing a jurisprudence on the rights of the child that does not fully ensure the rights and special protections that children today so desperately need."⁵ Accountability under the law would be more clear and consistent if national legislation clearly gave the CRC the force of national law within Canada.

8. The concept of progressive realization of economic, social and cultural rights, as articulated in the CRC, can provide a useful yardstick for measuring the fulfillment of children's rights in accordance with the availability of resources.

The importance of national legislation will be evident to committee members if you review the saga of attempts to develop a national policy to protect separated children, who arrive in Canada without a parent or legal/customary guardian. World Vision Canada and other NGOs repeatedly identified this problem over a period of several years. We engaged in dialogue with officials at various levels and developed a model for a national policy based on the CRC. We appealed to the UN Committee on the Rights of the Child, who included recommendations on this matter in their concluding observations to Canada. Yet, in spite of all the ongoing efforts to resolve this issue at the national and international level, Canada still does not have a coherent, national policy with effective mechanisms in place to protect some of the most vulnerable children.

This may be one issue that the committee wishes to consider in greater detail and provide recommendations for immediate resolution. We have more specific suggestions on this matter, if you wish to pursue it.

II. The CRC in international policy

World Vision has recommended on several occasions that the new international policy framework, which is expected soon, should use human rights as its core principles, including the rights of children. This is in keeping with the principle that a world fit for children will be a world fit for all people.

A central role for human rights in Canada's international policy framework would provide clarity about Canada's commitment to human rights in such areas as international trade and international security. Just last week at the annual human rights consultations, officials publicly stated that the human rights division of Foreign Affairs Canada must consider impacts on trade when it negotiates on Canada's behalf in human rights arenas, but trade negotiators are not required to routinely consider human rights when they negotiate international trade agreements on Canada's behalf. Coherence in international policy requires greater consistency. In the case of the rights of children, *A World Fit for Children*, the international action plan to which Canada is committed, includes several provisions in the areas of trade, international finance, and security.

Respect for the rights of children also has implications for the Canadian International Development Agency (CIDA). Five years ago CIDA developed a Child Protection Action Plan that explicitly articulated a child rights framework. The plan has demonstrated the importance,

⁵ Supra note 2, page 19.

added value, and practical benefits of programming based on the protection aspects of the CRC for three vulnerable groups, namely working children, children affected by armed conflict, and children subject to sexual exploitation. This strategy is under review, so your committee's recommendations about the role of child rights at CIDA would be timely.

While the strategy should be renewed to build on what was learned in the important area of child protection, it should also be expanded into a more comprehensive child rights approach. By doing so, Canada would be in line with the recommendations of the Committee on the Rights of the Child, which has affirmed that:

*"When States ratify the Convention, they take upon themselves obligations not only to implement it within their jurisdiction, but also to contribute, through international cooperation, to global implementation"*⁶

World Vision Canada suggests two areas for expansion as examples of a more robust rights-based approach to development:

1. Child rights should be addressed in all of CIDA's country strategies. Country strategies are the central CIDA policy instrument to achieve sustainable development. Development will not be sustainable if large youth populations are ignored in development plans. Country strategies could assist developing countries fulfill their obligations under the CRC as an integral part of effective poverty reduction.
2. All aspects of children's rights should be considered in CIDA's sectoral policy frameworks. A child protection approach to CIDA's agricultural strategy, for example, considered the rights of working children, but did not consider the right to food. The right to food, as articulated in the CRC, should be at the heart of CIDA's agricultural policy; including it would also provide a policy basis for integrating aid and trade policy in the best interests of affected peoples, such as children and their households.

III. Strengthening accountability mechanisms at the national and international levels

While the CRC is almost universally ratified and its goals widely accepted, the implementation mechanisms are very weak. This committee could make a positive contribution by suggesting that Canada provide leadership in strengthening accountability mechanisms for compliance with the CRC.

Most child rights advocates agree that the current reporting system is not adequate, especially for the purpose of stopping serious violations before extensive harm is done. For example, the five years between each report is a long time in the life of children coping with serious violations of their security and other rights in the context of armed conflicts. Stronger investigative and responsive mechanisms are needed to live up to international commitments to children.

National level

National legislation would include provisions for a staged process for compliance. We note that the current approach to the use of ombudspersons in provinces is uneven, but has potential for earlier intervention than court hearings. Early and preventive tools should be considered as

⁶ *Supra* note 3, Para.7.

preferable to reliance on appeals to the court for compliance, although the right of appeal to the courts should always be an option.

Another measure of accountability in national legislation could be a provision for “child impact assessments” to predict the impact on children of proposed laws, policies or budgetary allocations, and a “child impact evaluation” to evaluate the actual impact of implementation.⁷ This process can be incorporated into government decision-making at all levels and as early as possible in the development of policy. Such a mechanism in Canada might have resulted in early redress to prevent more children from falling into poverty, as happened in the wake of Canada’s fight against the deficit during the 1990’s. A country as wealthy as Canada should be able to fight a deficit without moving backward in the fight against child poverty.

The child impact assessment and evaluation tool has been used in other countries as a measure of progressive realization; models in other countries could be studied during the development of national legislation. In general, transparency and regular public reporting are important preventive tools and can also be used, in a child friendly format, as avenues to include active participation of children themselves in monitoring and making suggestions for ways to make progress toward the full realization of the rights of children.

International Level

Internationally, the World Vision partnership proposed that strengthening the human rights system should be a top priority for UN reform. The reason is that the human rights system is the only tool to protect human interests in the international arena, in the face of rapid growth in the use of legally binding international trade agreements, the legally binding demands of international financial institutions on developing countries, and the military dominance of a few powerful States. While human rights treaties are also legally binding upon States Parties, the human rights system is relatively weak compared with the other systems, and human rights become a secondary consideration or are ignored all together.

The results of the weak human rights system are obvious in the failure of the UN system, in spite of significant advocacy, to effectively protect children from the most egregious abuses in the context of long periods of armed conflict, such as the situation in northern Uganda, which has gone on for more than ten years without serious attention, the situation in the Democratic Republic of the Congo where violations are well-known, and the current situation in Darfur, which could have been prevented. In each case warnings and information was available, but few serious steps were actually taken to protect the security and other rights of children.

We welcome the proposed reforms in the UN High Level Panel Reform as a first step, but they remain inadequate. As a first step, we suggest that Canada strongly support the recommendation that the UN High Commissioner for Human Rights have regular access to the Security Council, and suggest that top priority be given to protecting the rights of children threatened by armed conflict. We have also suggested that Canada’s work on security for children should remain a high priority in the new international policy framework.

We appreciate Canada’s leadership in the development of the International Criminal Court and the inclusion of egregious violations of the rights of children in the definition of crimes against humanity and war crimes. But this will be used only in limited cases and after the abuse has

⁷ Ibid, Para.45.

happened. It needs to be complemented with stronger measures at earlier stages to prevent abuses of the rights of children.

In addition to the recommended measures in various reports on UN reform, World Vision Canada suggests that steps be taken toward the development of a complaints procedure for violations of the rights of children. Such a procedure would help address serious violations that have not been resolved through domestic remedies, and which are not being properly addressed through the five-year reporting procedure to the Committee on the Rights of the Child. Some child rights advocacy groups, such as Kindernothilfe in Germany, and the NGO Group for the Convention on the Rights of the Child [in Geneva], have done initial work ; we would suggest that the committee consider the emerging research into ways to strengthen implementation of the CRC through the development of a complaints procedure.

Without a serious mechanism that allows children and advocates to appeal for protection with a reasonable chance of having their situation addressed, one can begin to question the integrity of the current emphasis on teaching children their rights. The World Vision partnership invests significant resources to help children and communities understand what the CRC means and advocate with their governments for realization of the rights of children. This is an important step at the local level. But the international tools of governance must also take the rights of children more seriously, or we risk offering children false hope.

As one example, we will leave for you a report done by the World Vision partnership for the World Bank, to show how the World Bank could contribute to child rights by taking seriously the commitments of States that are Parties to the CRC, and helping national governments fulfill their commitments. The report demonstrates, as an example, that using a child rights approach to education, one of the key areas for sustainable development, would actually contribute to greater effectiveness of development financing.

Conclusion

The CRC is an important, effective, but under-utilized instrument for advancing the rights of children in Canada and around the world. Simultaneous and persistent action is needed at all levels of governance to turn its promise into reality.

World Vision Canada encourages this committee in its important work of contributing another block in building a system that ensures, respects, promotes, fulfills and protects the rights of children. We strongly encourage this committee to recommend the development of legislation to incorporate the CRC into domestic law, as evidence that Canada takes the rights of children seriously. In addition, we encourage you to recommend that the CRC provide a guiding framework for coherence in Canada's international policy by taking the rights of children seriously in international aid programs, in diplomacy, in international trade and financial agreements, and in security. Finally, we encourage you to recommend that Canada provide leadership in advocating for a complaints procedure and other measures to strengthen international mechanisms to promote and protect the rights of children.