



**LEGISLATIVE MEASURES FOR THE IMPLEMENTATION OF  
THE CONVENTION ON THE RIGHTS OF THE CHILD:  
INTERNATIONAL LESSONS LEARNED AND  
RECOMMENDATIONS FOR THE GOVERNMENT OF CANADA**

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**World Vision is a Christian relief, development and advocacy organization dedicated to working with children, families and their communities worldwide to reach their full potential by addressing the causes of poverty and injustice. World Vision serves all people regardless of religion, race, ethnicity or gender.**

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## EXECUTIVE SUMMARY

Canada has been widely recognized internationally for its leading role in drafting the United Nations Convention on the Rights of the Child (CRC), and promoting the rights of children around the world. However, the reality is that Canada has fallen behind in making its commitments to children a reality at home and abroad.

The United Nations Committee on the Rights of the Child has provided clear guidelines for the implementation of the CRC, with particular attention to the need for legislative measures, and has recommended that States Parties undertake such actions as:

- a) Tabling a “Declaration of Intent to Comply” in order to confer powers on appropriate officials to implement or enforce the CRC;
- b) Expressly incorporating the Convention through constitutional reform or incorporating the provisions or principles of the Convention into legislation;
- c) Conducting a comprehensive review of all domestic legislation to ensure compliance with the CRC and its provisions;
- d) Enacting consolidated children’s rights statutes; and
- e) Enacting sectoral laws to clarify the extent of children’s rights.

Canada, however, has not expressly incorporated the Convention. Instead, the Convention has been deemed to be implemented 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. Despite the assurances the government has made regarding its compliance with the CRC, there are numerous glaring examples of how Canada’s federal laws do not conform to the standards of the Convention. As a result, there is increasing concern that Canada’s failure to undertake legislative measures to implement the CRC is negatively impacting children both in Canada and abroad. The impact is particularly evident in the areas of child poverty, children in migration (such as trafficked or refugee children), Aboriginal children, and corporal punishment.

In 2004, the Standing Senate Committee on Human Rights embarked on a study of Canada’s obligations to the rights and freedoms of children. At that time, World Vision Canada made a submission on the importance of strengthening measures to implement the CRC. In 2005, the Senate Committee issued an interim report with its findings, and recommended specific actions that would enhance Canada’s compliance with the CRC. The Senate Committee gave particular attention to the need for enabling legislation that would legally bind the federal government to its international obligations, and the need for enacting legislation to establish a Children’s Commissioner.

In response to that report, World Vision Canada undertook research, in partnership with the Child Rights Working Group, a student-led initiative of the University of Toronto’s International Human Rights Programme, to assess the measures taken by other States Parties to the CRC in order to gain lessons that could be applied to the execution of the Senate Committee’s recommendations. As a result of this research, World Vision Canada entered a second written submission to the Senate Committee; this companion paper elaborates on the issues and recommendations raised in World Vision’s second submission.

World Vision Canada examined various approaches to incorporating the Convention into domestic law, and determined which of these approaches could be applied within the Canadian context. Case studies of South Africa, Sweden, Norway, and Argentina revealed the following:

- South Africa engaged in constitutional reform, enacted a comprehensive children's rights statute, and conducted ongoing legislative review to ensure compliance;
- Sweden declared its commitment to the Convention through a Parliamentary bill, and conducted sweeping review of legislation;
- Norway incorporated the Convention through its Human Rights Act; and
- Argentina gave the Convention constitutional status.

World Vision Canada and the Child Rights Working Group also researched the role that independent human rights institutions for children, as established by legislation, have played in the implementation and advancement of children's rights. A review of the Canadian context and case studies of Norway, Sweden, New Zealand, England, Scotland and Austria revealed the following:

- Nine Canadian provinces have legislation establishing a children's officer or advocate; unfortunately, two of the provincial institutions do not operate independently from government. Although the powers and responsibilities differ across provinces, they all work to ensure that children are treated with dignity, tolerance, respect and equality. There is no independent human rights institution at the federal level;
- Norway became the first country to establish an Ombudsman for Children through legislation in 1981. The legislation was subsequently amended in 1998 in order to align the mandate of the Ombudsman to the CRC. The roles and responsibilities of the Ombudsman are broadly based and include the investigation of complaints, monitoring the implementation of the CRC, and conducting education programmes. Through its activities and the involvement of children, the Ombudsman has contributed to the advancement of children's rights in Norway;
- Sweden was the first State Party to link the mandate of the Children's Ombudsman, as established through legislation, to the CRC. The Children's Ombudsman monitors the implementation of the Convention at the national, regional and municipal level, and widely promotes the rights and interests of children, recognizing and involving the views of children and youth in a meaningful way;
- New Zealand established the Commissioner for Children in 1989. The Department of Social Welfare initially administered the Commissioner, however, concerns over the independence of the Office led to the enactment of the Children's Commissioner Act 2003. The amended legislation strengthened the independence and the role of Office of the Commissioner, and linked its broad functions and powers to the Convention;
- England established the Children's Commissioner through legislation in 2004, with the main function of promoting awareness of the views and interests of children in England, having regard to the CRC. In its initial year, the Children's Commissioner concentrated on establishing a presence and setting up a national policy while actively encouraging the participation of children and young people;

- Scotland's Commissioner for Children and Young People was established in 2003, after several years of campaigning by child-focused organizations, in order to promote and safeguard the rights of children and young people. Having regard to the CRC, the Commissioner launched a wide-reaching poll on the issues affecting children, the results of which formed the action plan for 2006-2008;
- Austria promoted the establishment of local ombudspersons in each of the nine provinces through child welfare legislation, charged with the primary task of counseling children and parents, and assisting in the resolution of disputes about care and upbringing. In 1991, a federal ombudsman was also established to respond to federal issues and collaborate with the local offices.

Taking into consideration Canada's federal nature and practice toward international treaties, and learning from the experiences of South Africa, Sweden, Norway, and Argentina, New Zealand, England, Scotland, and Austria, World Vision Canada recommends that the Canadian government undertake the following actions in order to improve its compliance with the CRC:

1. Adopt enabling legislation by tabling the CRC in Parliament, accompanied by a declaration that all relevant legislation will be reviewed and amended in compliance with the treaty obligations, and that the federal government agrees to comply with the CRC. This would strengthen the legal position of children and also signal Canada's commitment to child rights;
2. Engage in a comprehensive review of legislation and related administrative guidelines and policies on an ongoing and systematic basis to ensure compliance with the CRC, to ensure coordination of legislation at the federal, provincial and territorial levels, and to set national standards. A permanent body that is representative of government and non-government organizations, professionals, and children should be established to conduct such reviews on an ongoing basis;
3. Enhance the role of Parliament by tabling Canada's country reports and the Committee's Concluding Observations, thus providing the opportunity to assess the adequacy of government actions and the compliance of existing laws with the CRC, and increasing transparency and accountability to the public;
4. Enact legislation to establish an independent national human rights institution for children at the federal level as complementary to effective government structures. A federal institution is necessary to handle issues outside the jurisdiction of the provinces and territories, to address systemic issues arising at the national level, and to coordinate and establish national standards for institutions across the country.

World Vision Canada strongly recommends that the Government of Canada implement these legislative measures, which affirm and strengthen the recommendations made by the Standing Senate Committee on Human Rights, as evidence that Canada takes the rights of children seriously.

## INTRODUCTION

The United Nations *Convention on the Rights of the Child*<sup>1</sup> (the “Convention” or the “CRC”) was adopted on 2 November 1989 and came into force on 2 September 1990, as the first legally binding international instrument for children’s rights. The CRC is hailed as unique among human rights treaties, covering the civil, political, economic, social and cultural rights of children – the broadest protection of any international human rights treaty.<sup>2</sup> It is almost universally embraced, with more ratifications than any other human rights treaty in history.<sup>3</sup>

Canada has been recognized for its leading role in the drafting the Convention, which included facilitating the input of over 40 countries of differing ideological, political, cultural and religious backgrounds.<sup>4</sup> In 1990, Canada co-chaired the World Summit for Children held at the UN headquarters, an unprecedented gathering of the world’s leaders to promote and commit to child rights. Canada also played an important role in the 2002 UN General Assembly Special Session on Children and its outcome document *A World Fit for Children*,<sup>5</sup> and subsequently issued its own National Plan of Action, *A Canada Fit for Children*.<sup>6</sup> However, in spite of its various commitments at the international level, there are still significant gaps with regards to Canada’s implementation of its duties toward children at the national level.

The Committee on the Rights of the Child (the “UN Committee”), the UN body that monitors the implementation of the Convention, has identified a wide range of measures for effective implementation by State Parties.<sup>7</sup> Despite these measures and numerous recommendations made to Canada following its initial and periodic country reports, Canada has fallen behind in its commitments to children. Canada has not incorporated the Convention into Canadian law, and has not been efficient in ensuring compliance through legislation and policy, citing jurisdictional hurdles due to its federal political and legal framework.

As a result, there is increasing concern that Canada’s failure to undertake legislative measures to implement the CRC is negatively impacting children in Canada and abroad, especially in the areas of child poverty, children in migration, Aboriginal children, and corporal punishment. Millions of children are paying the price for Canada’s lack of action:

- 1.2 million Canadian children live in poverty – almost 1 in 6 children.<sup>8</sup>
- The gap between rich and poor is deeply entrenched despite economic growth. Canada’s top 10% richest families with children had average incomes that were more than 13 times higher than the bottom 10%.<sup>9</sup>

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<sup>1</sup> UN General Assembly Resolution 44/25 (1989) [hereinafter the *Convention or the CRC*].

<sup>2</sup> Interim Report of the Standing Senate Committee on Human Rights, *Who’s In Charge Here? Effective Implementation of Canada’s International Obligations with Respect to the Rights of Children* (Ottawa: November 2005) at 32 [hereinafter *Senate Committee*].

<sup>3</sup> It has been ratified by all UN member states, with the exception of Somalia and the United States of America.

<sup>4</sup> *Senate Committee*, *supra* note 2 at 33.

<sup>5</sup> *A World Fit for Children*, General Assembly Resolution, 27<sup>th</sup> Special Sess. (2002), UN Doc. A/RES/S-27/2 (2002).

<sup>6</sup> *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, (Ottawa: Queen’s Printer, 2004).

<sup>7</sup> See Committee on the Rights of the Child, General Comment No. 5, *General Measures of Implementation of the Convention on the Rights of the Child* (arts. 4, 42 and 44, para 6.), CRC, 34<sup>th</sup> Session, UN Doc. CRC/GC/2003/5 (2003) [hereinafter *General Comment No. 5*].

<sup>8</sup> Campaign 2000, *Decision Time for Canada: Let’s Make Poverty History, 2005 Report Card on Child Poverty in Canada*, (2005) at 1, online: <http://www.campaign2000.ca/rc/rc05/05NationalReportCard.pdf> (accessed 07 November 2006).

<sup>9</sup> *Ibid.*

- Conditions are worsening for the working poor, with a clear detrimental impact on children. Of all poor children in Canada, one-third have parents who worked full time for the whole year. Only 38% of the unemployed have access to Employment Insurance, which heightens the vulnerability of children when their parents are unemployed.<sup>10</sup>
- Canada consistently ranks as one of the top countries on the UN Human Development Index, but when the Index isolates the economic and social well-being of Canada's Aboriginal population, the rank drops to 78.<sup>11</sup> Aboriginal children are four times more likely to be hungry than other children in Canada.
- The rate of poverty among immigrant and refugee children is almost twice as high as national figures. Among the challenges immigrant families face is that their foreign work experience and education are not always well-recognized, leaving them no option but to take low-paying jobs.<sup>12</sup>
- Canada still tolerates violence against children. Section 43 of the *Criminal Code*<sup>13</sup> allows for the reasonable correction of a child by force, which is a violation of the child's right to protection from corporal punishment and other forms of cruel and degrading punishment. The Supreme Court of Canada constitutionally upheld this provision in 2004.<sup>14</sup>
- The impact is also evident with separated children in Canada seeking asylum and refugee status, where the lack of clear and consistent policies, lack of reliable data and impact assessment, and the lack of training for service providers is leaving children without appropriate care and uncertain legal status.<sup>15</sup>

In November 2004, the Standing Senate Committee on Human Rights in Canada (the "Senate Committee") embarked on a study of Canada's obligations in relation to the rights and freedoms of children. World Vision Canada had the opportunity to discuss the importance of strengthening measures to implement the Convention in Canada, and in particular, recommended that Canada develop and adopt legislation to give the CRC the force of national law in Canada, including appropriate accountability mechanisms.<sup>16</sup>

In November 2005, the Senate Committee issued an interim report on its findings, and provided specific recommendations for effective implementation of its international obligations. In particular, the Senate Committee recommended that Canada: adopt enabling legislation that will bind the federal government to the CRC, ensure compliance of all existing and new legislation with the CRC, and establish an independent Children's Commissioner.<sup>17</sup>

World Vision Canada welcomed the Senate Committee's recommendations, and in response, undertook research in partnership with the Child Rights Working Group, a student-led initiative of the University of Toronto's International Human Rights Programme, to assess the efforts of other States Parties to

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<sup>10</sup> *Ibid.* at 2.

<sup>11</sup> D. Toyen, "World Watch: Child Poverty in Canada", *World Vision Canada* (March-April 2006), at 1.

<sup>12</sup> *Ibid.*

<sup>13</sup> R.S.C. 1985, c. C-46

<sup>14</sup> See *Canadian Foundation for Children, Youth and the Law v. Canada (Attorney General)*, [2004] 1 S.C.R. 76.

<sup>15</sup> See Appendix I and II for case studies of separated children in Canada.

<sup>16</sup> K. Vandergift and S. Austin, "Putting Children First" (Presentation to the Standing Senate Human Rights Committee on Canada's International Obligations in Regards to the Rights and Freedoms of Children, 14 February 2005) [unpublished]; Transcripts of Proceedings, online: [http://www.parl.gc.ca/38/1/parlbus/commbus/senate/Com-e/huma-e/05ev-e.htm?Language=E&Parl=38&Ses=1&comm\\_id=5](http://www.parl.gc.ca/38/1/parlbus/commbus/senate/Com-e/huma-e/05ev-e.htm?Language=E&Parl=38&Ses=1&comm_id=5) (accessed 09 November 2006).

<sup>17</sup> *Senate Committee, supra* note 2 at 82-103.

undertake legislative measures to implement the CRC. We also researched legislation establishing independent human rights institutions as complementary frameworks to government initiatives in the advancement of children's rights. The research took into consideration Canada's political and legal framework and existing provincial children's commissioners, given that the federal, provincial, and territorial governments share the responsibility of implementing the CRC.

As a result of the research undertaken, World Vision Canada entered a second written submission to the Senate Committee; this companion paper elaborates on the issues and recommendations raised in that submission.<sup>18</sup> Drawing upon lessons learned from the experiences of South Africa, Sweden, Norway, Argentina, New Zealand, England, Scotland and Austria, World Vision Canada has a series of recommendations concerning legislative measures that should be undertaken by the Government of Canada, in order to ensure greater compliance with the CRC.

## **LEGISLATIVE MEASURES OF IMPLEMENTATION**

The obligation to implement the CRC upon ratification by a State Party is clearly set out in 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.

Moreover, the UN Committee has provided clear guidelines for implementation of the CRC by State Parties.<sup>19</sup> These guidelines, along with the recommendations made by the Senate Committee, and this research by World Vision Canada and the Child Rights Working Group, have the potential to form the basis for legislative reform that could contribute substantially to the realization of children's rights in Canada.

Although the Convention does not formally require State Parties to incorporate the provisions into domestic law, the UN Committee has recognized that such an approach is desirable in order to ensure that domestic legislation is compatible with the principles and provisions of the Convention.<sup>20</sup> There are various approaches to giving domestic legal effect to the Convention:

- a) Tabling a Declaration of Intent to Comply before Parliament in which the federal government considers itself bound to the terms of the treaty, and thereby conferring powers on appropriate officials to implement or enforce the CRC.
- b) Undertaking a comprehensive review of all domestic legislation and related administrative guidelines on an article by article basis, as well as holistically, considering all the provisions and general principles of the Convention. This is to be done on a continual basis.

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<sup>18</sup> S. Austin, *Submission to the Senate Standing Committee on Human Rights Concerning Canada's International Obligations to the Rights and Freedoms of Children* (18 October 2006) [unpublished]. Due to limited resources, World Vision Canada was unable to carry out research on approaches by other State Parties to embed the CRC within their role in foreign policy and international assistance, further to Recommendation V.

<sup>19</sup> See *General Comment No. 5*, *supra* note 7.

<sup>20</sup> Rachel Hodgkin and Peter Newell, *Implementation Handbook for the Convention on the Rights of the Child* (New York: UNICEF, 2002) at 65.

- c) Ensuring legal effect of the Convention within the domestic legal system through constitutional reform or the incorporation of the provisions and principles of the Convention into legislation so that the provisions can be directly invoked before the courts and applied by national authorities. The Convention shall have supremacy where there is a conflict with domestic legislation or common practice.
- d) Enacting consolidated children's rights statutes that emphasize the Convention's principles.
- e) Enacting sectoral laws in areas affecting children, such as education, health, and justice, thus clarifying the extent of children's rights and reflecting principles and standards of the Convention.<sup>21</sup>

While the UN Committee accepts each approach, no measure is sufficient in itself<sup>22</sup>. For instance, constitutional reform, while entrenching the key principles of the Convention, does not necessarily ensure respect for children's rights.<sup>23</sup> Sectoral laws may overlook the general principles or result in inconsistencies between laws.<sup>24</sup>

It must be noted that general legislative reform is insufficient to guarantee the realization of the rights of children. Ongoing consultation on the goals and consequences of the treaty between the various levels of government is important to enable cooperation in the long run. Other measures of implementation include the establishment of governmental coordinating and monitoring bodies, comprehensive data collection, education and training for all stakeholders and the general public, development of a national strategy, the involvement of civil society, international cooperation, and adequate resource allocation to support each of the mechanisms.

## CANADA AND THE CONVENTION ON THE RIGHTS OF THE CHILD

Canada ratified the CRC on 13 December 1991, with reservations to articles 21 and 37(c), binding Canada to fully observe the obligations under the Convention. Ratification did not result in the automatic incorporation of the CRC into Canada's domestic laws, so as to enable individuals to rely on it when rights are breached. In Canada, international treaties need specific legislation or constitutional reform to be enforceable at the national level.<sup>25</sup> Rather than taking this approach, Canada's approach has generally been to indirectly implement treaties by promising to ensure that pre-existing legislation is in conformity with the obligations under a particular convention.<sup>26</sup> On some occasions, however, Canada has developed specific legislation to ensure domestic application of international treaties.<sup>27</sup> In

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<sup>21</sup> The approaches have been compiled and summarized from *General Comment No. 5*, *supra* note 7; *Senate Committee*, *supra* note 2; *Hodgkin*, *supra* note 9; *Committee on the Rights of the Child, Report on the Twenty-second Session*, CRC, 1999, UN Doc. CRC/C/90 [hereinafter *Twenty-second Session*]; *UNICEF Innocenti Research Centre, Summary Report: Study on the Impact of the Implementation of the Convention on the Rights of the Child*, (Florence: Innocenti Publications, 2004) [hereinafter *UNICEF Summary Report*].

<sup>22</sup> *UNICEF Summary Report*, *supra* note 21 at 4.

<sup>23</sup> *Comment No. 5*, *supra* note 7 at para. 21.

<sup>24</sup> *UNICEF*, *supra* note 21 at 4.

<sup>25</sup> States following this practice are referred to as dualist countries, whereas States where treaties are automatically integrated into the legal framework by existing constitutional principles are referred to as monist countries.

<sup>26</sup> *Senate Committee*, *supra* note 2 at 37.

<sup>27</sup> For instance, *The Rome Statute of the International Criminal Court*, UN Doc. A/CONF.183/9, was implemented in Canada through the *Crimes Against Humanity and War Crimes Act*, S.C 2000, c. 24; the United Nations Convention on the *Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on their Destruction*, S.C 2000, c. 24 was implemented through the *Anti-Personnel Mines Convention Implementation Act*; S.C 1997, c. 33; and the Geneva Conventions for the Protection of War Victims was implemented by the *Geneva Conventions Act*, R.S.C. 1985, c. G-3.

the case of the CRC, Canada chose to take the route of indirect implementation, and it has now become clear that this method has failed to sufficiently protect children's rights.

Prior to ratification, the Government of Canada entered into a process of consultation. Following a review and the making of some minor adjustments to existing laws across Canada, the federal government declared itself satisfied that the Convention could be deemed implemented 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.<sup>28</sup> No legislation was adopted to incorporate the Convention, nor was a Declaration of Intent to Comply tabled at Parliament. Nevertheless, the Government of Canada expected that the Convention would be taken into account in determining the ambit of children's rights found in the Charter, the common law or relevant legislation.<sup>29</sup>

In *Baker v. Minister of Citizenship and Immigration*,<sup>30</sup> the Minister of Citizenship and Immigration argued that the Convention was not applicable to Canadian law. The Supreme Court of Canada held that:

The Convention has not been implemented by Parliament. Its provisions therefore have no direct application within Canadian law. Nevertheless, the values reflected in international human rights law may help inform the contextual approach to statutory interpretation and judicial review.<sup>31</sup>

The court went on to cite a passage from R. Sullivan, *Driedger on the Construction of Statutes*:

[T]he 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.<sup>32</sup>

Since *Baker*, provincial courts have relied on the decision in order to promulgate the rights of children by reference to the provisions and principles enshrined in the Convention.<sup>33</sup> Despite the significance of *Baker* in this regard, critics have expressed concern that without specific implementing legislation, the Convention will remain a persuasive rather than obligatory force.<sup>34</sup> Further, child rights advocates have voiced concern that the provisions of the Convention, even as persuasive authority, is “only occasionally argued or used in the courts.”<sup>35</sup>

Another complicating factor is the federal nature of Canada and its division of legislative powers; the broad range of issues covered under the CRC means that the responsibility for implementing children's rights is shared by the federal, provincial and territorial, and municipal governments. As a result, jurisdictional coordination can pose a challenge. Nevertheless, all government levels have recognized

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<sup>28</sup> *Senate Committee*, *supra* note 2 at 43.

<sup>29</sup> *Initial Report of State Parties: Canada*, CRC, 1994, UN Doc. CCR/C/11/Add.3 at para. 28 (hereinafter *Initial Report: Canada*).

<sup>30</sup> [1999] 2 S.C.R. 817 [hereinafter *Baker*].

<sup>31</sup> *Ibid.* at paras. 69-70. See also J. Chamberland, “The Application of the CRC by Canadian Courts Since the Supreme Court Decision in *Baker*” in R. Joyal, J. Noel and C.C. Feliciati, eds. *Making Children's Rights Work: National and International Perspectives, Final Report of the Conference held in Montreal on November 18 to 20, 2004*, (Quebec: Les Editions Yvon Blais Inc, 2005) 36 at 40.

<sup>32</sup> *Baker*, *supra* note 32 at para. 70.

<sup>33</sup> See Chamberland, *supra* note 31.

<sup>34</sup> *Ibid.*

<sup>35</sup> Emphasis added; *Senate Committee*, *supra* note 2 at 45.

the importance of collaboration, consultation and the formation of an integrated approach to child rights.<sup>36</sup>

In 1997, the federal government, in partnership with the provincial and territorial governments, developed the National Children's Agenda, a shared vision, values and goals to improve the well-being of Canada's children. In April 2004, the Government of Canada released a *National Plan of Action, A Canada Fit for Children*, re-affirming its commitment to making children and families a national priority and to continuing to work with governments, stakeholders and the public by focusing on four central themes: supporting families and strengthening communities; promoting healthy lives; protecting children from harm; and promoting education and learning. This plan was the official response to the commitments made on 10 May 2002 at the UN General Assembly Special Session on Children, and was developed under consultation and dialogue with all government levels and the public, including children and youth.<sup>37</sup>

The UN Committee has acknowledged the numerous actions and programmes taken by Canada to implement the Convention. However, it remains concerned that the general principles of the CRC are not sufficiently reflected in domestic law, and adequate measures have not been taken to communicate the obligations under the Convention and ensure its minimum standards are applied at the provincial and territorial level through legislation, policy and other appropriate measures.<sup>38</sup>

The periodic reports submitted by Canada to the UN Committee have described the different legislative measures taken by the federal and provincial governments. While all government levels reported that their legislation conforms to the principles of the Convention, there are no national standards, and the degree of commitment to ensure legislative compliance has varied considerably across the country.

Since ratification, the federal government specifically considered the Convention in legislative developments in the areas of child prostitution, child sex tourism, criminal harassment, female genital mutilation, and youth justice.<sup>39</sup> The general principles of non-discrimination and best interests of the child have been promoted through specific legislative measures, however they have not been fully implemented in all relevant legislation.<sup>40</sup>

While no systematic changes have been made to federal legislation to bring Canada's laws into conformity with the CRC, there have been notable changes in some of the provinces and territories. Quebec declared itself bound by the Convention by adopting Order in Council 1676-91 on December 9, 1991.<sup>41</sup> The *Civil Code of Quebec*<sup>42</sup> and the *Youth Protection Act*<sup>43</sup>, repeat the fundamental principles of the Convention.<sup>44</sup>

British Columbia<sup>45</sup> and Ontario<sup>46</sup> implemented significant legislative changes relating to the protection of children and youth, while New Brunswick<sup>47</sup> established a comprehensive legislative framework in the

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<sup>36</sup> *Second Periodic Report of States: Canada*, 2001, CRC, UN Doc. CRC/C/83/Add.6 at para. 11 (hereinafter *Second Report: Canada*).

<sup>37</sup> *A Canada Fit for Children*, *supra* note 6.

<sup>38</sup> Committee on the Rights of the Child, *Concluding Observations: Canada*, CRC, 34<sup>th</sup> Session, UN Doc. CRC/C/15/Add.215 (2003) at paras. 8-9 [hereinafter *Observations: Canada*].

<sup>39</sup> *Second Report: Canada*, *supra* note 36 at para. 7.

<sup>40</sup> *Observations: Canada*, *supra* note 38 at paras. 21-25.

<sup>41</sup> *Initial Report: Canada*, *supra* note 29 at para. 852.

<sup>42</sup> R.S.Q., c. C-1991.

<sup>43</sup> R.S.Q., c. P-34.1.

<sup>44</sup> *Second Report: Canada*, *supra* note 36 at para. 1028.

<sup>45</sup> *Ibid.* at para. 593.

<sup>46</sup> *Ibid.* at para. 946.

<sup>47</sup> *Initial Report: Canada*, *supra* note 29 at paras. 1016-1017.

area of custody, detention and criminal procedure. PEI incorporated the “best interests” principle into its adoption, child welfare and child protection legislation.<sup>48</sup>

Newfoundland entered into a process of legislative review to harmonize its law and policy with the Convention,<sup>49</sup> while Manitoba reviewed its legislation at the outset and is monitoring future enactments to ensure compliance.<sup>50</sup> Nova Scotia took legislative, regulatory, and policy initiatives to comply with the Convention, some as a response to the concerns raised by the UN Committee in its Concluding Observations to the first periodic report.<sup>51</sup> In 1993, Saskatchewan developed a comprehensive, flexible and responsive Action Plan, which includes a framework for implementation and review of legislation, policies, programmes and services.<sup>52</sup>

The Governments of Yukon and the Northwest Territories acknowledge their responsibility to comply with Canada’s international obligations under the Convention. Alberta did not formally support the ratification of the Convention, but the government has expressed confidence that its legislation exceeds protection under the Convention by bringing its legislation and practices into accord with the *Canadian Charter of Rights and Freedoms*.<sup>53</sup>

Nine provinces have legislation creating a commissioner, ombudsperson, advocate or officer for children, or have a child and youth services division within an established commission or ombudsperson’s office: British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, Quebec, New Brunswick, Nova Scotia, and Newfoundland, although, it appears that New Brunswick has not yet appointed an Advocate. A review of the provincial legislation reveals that there is no uniformity in the mandates and powers of each office across the country.<sup>54</sup> For instance, seven commissioners are independent and report to the provincial legislature, the commissioners in Ontario and Alberta operate within a government ministry. They are all concerned with children receiving child protection and welfare services; some commissioners are also responsible for young offenders and children receiving other government services. Quebec has the only office to cover all rights as granted under its *Quebec Charter of Rights and Freedoms*.<sup>55</sup>

All provincial legislation, except Nova Scotia, require the commissioner to monitor the delivery of services within its mandate and advise the Minister responsible, but only Quebec and New Brunswick are empowered to make recommendations on legislative change. Ontario and British Columbia do not have the power to receive and review individual complaints, although British Columbia may look into systemic issues affecting children and youth. Manitoba, Quebec, New Brunswick, Nova Scotia and Newfoundland specifically outline when a commissioner may or shall refuse to investigate; only Quebec establishes a referral mechanism. It should be noted that none of the provincial legislation make reference to the CRC.

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<sup>48</sup> *Second Report: Canada, supra* note 36 at paras. 1374-6.

<sup>49</sup> *Initial Report: Canada, supra* note 29 at para. 1166.

<sup>50</sup> *Ibid.* at para. 602

<sup>51</sup> *Second Report: Canada, supra* note 36 at para. 1296.

<sup>52</sup> *Initial Report: Canada, supra* note 29 at para. 531.

<sup>53</sup> *Second Report: Canada, supra* note 36 at para. 694.

<sup>54</sup> For simplicity, the title of commissioner may be used when referring to all provincial offices. For a summary of legislation, see Appendix V.

<sup>55</sup> R.S.Q. c. C-12 [hereinafter *Quebec Charter*]; see also C. Giroux, *Child Advocacy Institutions: Providing Effective Protection for Child and Youth Rights* (International Conference, Making Children’s Rights Work: National and International Perspectives, Montreal, 19 November 2004), online: [http://www.ibcr.org/PAGE\\_EN/2004%20Conference%20documents/Giroux\\_ENG.pdf](http://www.ibcr.org/PAGE_EN/2004%20Conference%20documents/Giroux_ENG.pdf) (accessed: 17 October 2006).

The provincial institutions informally organized the Canadian Council of Provincial Child and Youth Advocates in 1996 to ensure that children and youth are treated with dignity, tolerance, respect and equality.<sup>56</sup> Although the mandates and powers differ from province to province, this alliance identifies issues of mutual concern and strives to develop ways to address issues at a national level by issuing statements on major issues and endorsing statements of other coalitions.<sup>57</sup>

Despite these instruments at the provincial level, there is no independent monitoring institution at the federal level to promote and protect child rights on a national basis or to deal with individual complaints outside the jurisdiction of the provinces and territories. To date, there is no body specifically established to monitor and coordinate ongoing legislative and administrative measures at the national and provincial levels.<sup>58</sup> Furthermore, no effective mechanism exists to ensure the ongoing implementation of the Convention within Canada, provincially or nationally.

The challenge of achieving cooperation and coherence between jurisdictions in the implementation of the Convention through legislative reform, as well as the ongoing monitoring of such implementation, is not unique to Canada. The next sections will look at the steps that South Africa, Sweden, Norway and Argentina have taken to implement the Convention through legislative reform. The establishment of independent human rights institutions in Norway, Sweden, New Zealand, England, Scotland, and Austria to advance and monitor the rights of children, will also be examined. These case studies will demonstrate that the challenges Canada faces can be overcome if the necessary political will is applied.

## INTERNATIONAL LESSONS LEARNED FROM THE IMPLEMENTATION OF THE CRC

### I. South Africa

South Africa ratified the CRC on 16 June 1995. The UN Committee received South Africa's initial report<sup>59</sup> and made positive comments on South Africa's efforts in the area of legal reform, recommending that it continue its efforts to ensure that domestic legislation and customary practice complies fully with the Convention.<sup>60</sup> The achievements in the area of legislative reform include:

- The guarantee under the new *Constitution of the Republic of South Africa* of a number of specific children's rights and freedoms provided by the CRC, under article 28(1) of the *Bill of Rights*. Article 28(2) entrenches the "best interests" principle as *paramount*<sup>61</sup> in every matter concerning children.
- The enactment of the *Children's Act*, No. 38 of 2005 resulted in a comprehensive and coordinated approach to the care and protection of children, with sections on parental

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<sup>56</sup> The Canadian Council of Provincial Child and Youth Advocates is an informal association although there is some governance structure and scheduled national meetings. Office of the Ombudsman of Nova Scotia, News Release, "*Canadian Council of Provincial Child and Youth Advocates Meet in Halifax*", (28 September 2005), online: <http://www.gov.ns.ca/news/details.asp?id=20050928007> (accessed 01 November 2006).

<sup>57</sup> Government of Saskatchewan, News Release, "Stop Blaming Youth Say Provincial Children's Advocates" (29 October 1998), online: [http://www.canadiancrc.com/articles/Sask\\_NR\\_Stop\\_blaming\\_youth\\_29OCT98.htm](http://www.canadiancrc.com/articles/Sask_NR_Stop_blaming_youth_29OCT98.htm) (accessed: 01 November 2006).

<sup>58</sup> *Observations: Canada*, *supra* note 38 at para. 10.

<sup>59</sup> *Initial Report of State Parties: South Africa*, CRC, 1999, UN Doc. CCR/C/51/Add/2 (hereinafter *Initial Report: South Africa*).

<sup>60</sup> Committee on the Rights of the Child, *Concluding Observations: South Africa*, CRC, 23rd Session, UN Doc. CRC/C/15/Add.122 (2000).

<sup>61</sup> Article 3 of the CRC affirms that the best interests of the child should be a *primary* consideration in all actions concerning the child; this is one of the four guiding principles of the CRC. In the case of South Africa, the Constitution has entrenched a higher standard, such that the best interests shall be the *paramount* consideration.

responsibilities, protection, health, adoption, inter-country adoption, and abduction. The Act also incorporates the “best interests” principle and child participation.

- The introduction and amendment of various laws to bring South African legislation in line with the Convention, and the establishment of a permanent body, the South African Law Commission, mandated with the renewal and improvement of law on a continual basis.<sup>62</sup>
- The development of a National Programme of Action, approved by Parliament in April 1996, is an instrument outlining the mechanisms needed for implementation by government departments, non-governmental organizations, and other child-related structures.
- The appointment of a director responsible for children’s rights within the South African Human Rights Commission.

These accomplishments have been made within the context of a federal parliamentary democracy with national and provincial governments that have concurrent jurisdiction in several areas affecting children, including education, health, and welfare, and with provisions to address supremacy of law in the event of conflict between national and provincial legislation.

South Africa’s comprehensive plan of action has been driven by the need to eliminate overt racial discrimination and harmonize laws post-apartheid.<sup>63</sup> The Government of South Africa identified law reform in the area of children’s rights as a priority following the ratification of the Convention, and it subscribes to a broad culture of consultation and interdepartmental cooperation at all stages of the law-making process.<sup>64</sup> Governmental and independent monitoring bodies have all assisted in the coordination of legislative reform.

Although the division of power in South Africa may not pose the same problems as in Canada due to the fact that there are concurrent jurisdictions with a provision in the event of conflict between national and provincial legislation, Canada can nonetheless learn from South Africa’s approach to establishing federal laws that guarantee the rights and principles enshrined in the CRC, and its culture of broad consultation and interdepartmental cooperation.

## 2. Sweden

Sweden ratified the CRC on 29 June 1990 without reservations, following the approval of Parliament on 21 June 1990 by way of Bill 1989/90:107, which pledged to follow the principles and provisions the CRC. The Bill also included a statement that a review of Swedish conditions in relation to the articles of the CRC was undertaken.<sup>65</sup>

The UN Committee received Sweden’s periodic reports<sup>66</sup> and acknowledged its achievements in the area of legislative reform:

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<sup>62</sup> See *South African Law Reform Commission Act, No. 19 of 1973*.

<sup>63</sup> Julie Sloth- Nielsen, *Children’s Rights And Law Reform In South Africa: An Update From The Juvenile Justice Front*, online <http://www.dci-au.org/html/sa.html> (last modified 30 May 2006).

<sup>64</sup> *Initial Report: South Africa*, *supra* note 59 at para. 8.

<sup>65</sup> *Initial Report of State Parties: Sweden*, CRC, 1992, UN Doc. CCR/C/3/Add.1 at para 11 [hereinafter *Initial Report: Sweden*].

<sup>66</sup> *Initial Report: Sweden*, *ibid.*; *Second Periodic Report of States: Sweden*, 1998, CRC, UN Doc. CRC/C/65/Add.3 [hereinafter *Second Report: Sweden*]; *Third Periodic Report of States: Sweden*, 2004, CRC, UN Doc. CRC/C/125/Add.1 [hereinafter *Third Report: Sweden*].

- A Children’s Committee was appointed in February 1996, with the task of analyzing any conflicts in the application of the “best interests” principle in Swedish law and practice, and establishing greater clarity and wider consensus regarding the implications of such application.<sup>67</sup>
- Various amendments and new legislation were enacted to bring conditions more closely in line with the rules and principles of the Convention.<sup>68</sup>
- In 1999, the Riksdag (the Swedish Parliament) adopted a national strategy for the implementation of the Convention, forming the basis of the nation’s child policy. One of the objectives of the strategy was to ensure that the Convention permeated all decision-making and actions affecting children and that a child rights perspective was adopted in that regard. This strategy was further developed and approved by Parliament in January 2004.<sup>69</sup>
- A Children’s Ombudsman was established by legislation<sup>70</sup> to implement and monitor the best interests of children, submit bills for legislative changes to the Swedish Government, and promote the application of the CRC in the work of government agencies, municipalities and county councils.

In Sweden, international treaties are not automatically integrated into domestic law. In the autumn of 1995, the Riksdag discussed a proposal for the express incorporation of the Convention into domestic law. Although it was rejected, the Standing Committee on Social Affairs<sup>71</sup> took the view that the Government should enter into a wide-ranging review of the compatibility of Swedish law and practice with the provisions of the Convention.<sup>72</sup> In February 1996, the Government appointed a parliamentary commission, the Children’s Committee, with the task of conducting this task. In the course of its review, the Children’s Committee gave priority to the question of children’s standing in matters of refusal of entry under immigration law, resulting in amendments to the legislation in 1997.<sup>73</sup>

Sweden’s strategy is to disseminate information and enhance public awareness of the Convention so that it permeates all decision-making and activities affecting children. Sweden has adopted a wide array of activities to achieve this strategy, including education and training for government staff and professional groups working with children, consultation with the county administrative boards on the development and improvement of activities, equipping the Children’s Ombudsman to ensure the rights and interests of children are respected, data collection and child impact assessments of child policy actions, and participation by children in government services and decision-making.<sup>74</sup> The main challenge facing Sweden is the need to overcome inconsistencies in the provision or accessibility of services to children and their families, by improving coordination between municipalities, county councils and ministries.<sup>75</sup>

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<sup>67</sup> *Second Report: Sweden, ibid.* at para. 87.

<sup>68</sup> *Ibid.* at paras. 65-85; see also Committee on the Rights of the Child, *Concluding Observations: Sweden*, CRC, 38<sup>th</sup> Session, UN Doc. CRC/C/15/Add.248 (2005) at para. 3 [hereinafter *Observations: Sweden*].

<sup>69</sup> See Gov’t Bill 1997/98:182; *Development of the National Strategy to Implement the UN Convention on the Rights of the Child*, Comm. 2003/04:47.

<sup>70</sup> *Children’s Ombudsman Act*, No. 1993:335 (amended 2002:377) [hereinafter *Sweden Act*].

<sup>71</sup> The Ministry of Health and Social Affairs is responsible for financial support to families with children, childcare, health and medical care, social welfare and questions relating to alcohol and drug abuse, and care of the disabled.

<sup>72</sup> *Second Report: Sweden, supra* note 66 at para. 86.

<sup>73</sup> *Ibid.* at para 87.

<sup>74</sup> Ministry of Health and Social Affairs, Fact Sheet No. 6, *Strategy to Implement the UN Convention on the Rights of the Child* (March 2004).

<sup>75</sup> *Observations: Sweden, supra* note 68 at para 8.

Sweden's approach to international treaties is similar to that of Canada's, in that they are not automatically integrated into the legal framework by existing constitutional or legislative principles. Furthermore, it appears that Sweden will not be incorporating the provisions of the CRC into domestic legislation. However, Sweden has taken specific actions to implement the CRC which could be applied in Canada: it passed a bill pledging to follow the provisions of the CRC, and appointed a Children's Committee to conduct a sweeping review of relevant legislation.

### 3. Norway

Norway ratified the CRC on 8 January 1991 with one reservation to article 40.2(b) dealing with the legal rights and fundamental freedoms of children alleged to have infringed the penal law. Prior to ratification of the Convention, the Government submitted Proposition No. 104 to the Storting (the Norwegian Parliament) for debate, which included a thorough legal review of the areas covered by the Convention in relation to Norwegian legislation. A preliminary review of the legislation identified provisions within Norwegian laws relating to criminal procedures that were inconsistent with the Convention.

The UN Committee received three periodic reports from Norway<sup>76</sup> and made positive comments on its efforts in the area of legal reform. In its Observations,<sup>77</sup> the UN Committee recommended that Norway continue its efforts to ensure that domestic legislation complies fully with the Convention, particularly in the areas of immigration, religious freedom, and the participation of children in various governing bodies. It further recommended training on the direct applicability of the Convention for judges and officials in the central government and municipalities.<sup>78</sup> The achievements in the area of legislative reform include:

- A comprehensive review of and amendments to the *Criminal Procedure Act* occurred in 1995, thus enabling Norway's reservations to the CRC to be withdrawn on 19 September 1995.<sup>79</sup>
- A comprehensive review of legislation was undertaken to eliminate any discrepancies and define the requirements of the Convention, leading to proposals for amendments to the *Civil Procedure Act*, the *Public Administration Act*, the *Adoption Act*, the *Child Welfare Act*, the *Children Act* and the *Penal Code*. The Convention is also the focus on a new *Independent Schools Act* and a new *Immigration Act*.<sup>80</sup>
- The incorporation of the Convention in 2003 into Norway's *Human Rights Act*, 1999 No. 30, giving it precedence over any legislation if a conflict were to arise.<sup>81</sup>
- The amendment to the *Ombudsman for Children Act* in 1998 to align the provisions with those under the CRC, thus mandating the Ombudsman to monitor law enforcement and

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<sup>76</sup> *Initial Report of State Parties: Norway*, CRC, 1993, UN Doc. CRC/C/8/Add.712 [hereinafter *Initial Report: Norway*]; *Second Periodic Report of States: Norway*, 1998, CRC, UN Doc. CRC/C/70/Add.2 [hereinafter *Second Report: Norway*]; *Third Periodic Report of States: Norway*, 2004, CRC, UN Doc. CRC/C/129/Add.1 [hereinafter *Third Report: Norway*].

<sup>77</sup> Committee on the Rights of the Child, *Concluding Observations: Norway*, CRC, 39<sup>th</sup> Session, UN Doc. CRC/C/15/Add.263 (2005) [hereinafter *Observations: Norway*].

<sup>78</sup> *Third Report: Norway*, *supra* note 76 at paras. 6-7.

<sup>79</sup> *Initial Report: Norway*, *supra* note 76 at para. 8.

<sup>80</sup> *Third Report: Norway*, *supra* note 76 at para. 23.

<sup>81</sup> In May 1999, three human rights conventions were incorporated through Norway's *Human Rights Act*, giving them precedence over any legislation if a conflict were to arise: *The Convention for the Protection of Human Rights and Fundamental Freedoms*, *The International Covenant on Economic, Social and Cultural Rights*, and *The International Covenant on Civil and Political Rights*.

administrative practices. The Ombudsman for Children was originally established in 1981 to promote the interests of children in relation to public and private authorities, and to follow up on the development of improved conditions under which children grow up.<sup>82</sup>

Similar to Canada and Sweden, Norway does not automatically incorporate international treaties into domestic law, but as far as possible, Norwegian law must be interpreted in accordance with international law.<sup>83</sup> The inclusion of the Convention into Norway's *Human Rights Act* means that Norway is the only dualist country to have expressly incorporated the Convention through domestic enabling legislation.<sup>84</sup>

Canada can learn from Norway's demonstrated commitment to child rights through the incorporation of the CRC into domestic legislation. Furthermore, Norway engaged in a comprehensive review of its legislation, which allowed it to subsequently withdraw its reservations to the CRC.

#### 4. Argentina

Argentina approved the CRC by Act No. 23,849 of 27 September 1990, indicating that it would enter reservations to article 21(b), (c), (d) and (e) regarding inter-country adoption. The Government of Argentina ratified the Convention on 4 December 1990 with the above-noted reservations.

International treaties are automatically incorporated into Argentine law and enjoy supremacy over domestic laws by virtue of Section 31 of the Constitution of the Argentine Nation. Furthermore, Argentina's commitment to the Convention was given constitutional status under article 75(22) of the Constitution, as amended on 22 August 1994.<sup>85</sup> However, as with Canada, the presence of a federal legislative framework presents a challenge to the effective implementation of the Convention.

Argentina is divided into 21 provinces and one autonomous city. Each jurisdiction has its own legislative framework and is responsible for specific government activities in the social, economic, health care and educational spheres, as well as for the administration and supervision of the police.<sup>86</sup> The UN Committee received Argentina's periodic reports<sup>87</sup> and recommended the enactment of a comprehensive law for the protection of children's rights at the federal level, in addition to provincial legislation complying with the provisions and principles of the Convention.<sup>88</sup> The UN Committee also recommended that an independent and effective mechanism be established to monitor the implementation of the Convention.<sup>89</sup> Some of Argentina's achievements to date include:

- As of 2002, the 4 provinces of Mendoza, Chabut, Tierra del Fuego, Cacho and the City of Buenos Aires have developed specific legislation to address the principles and provisions of the

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<sup>82</sup> Act No. 5 of March 6, 1981 Relating to the Ombudsman for Children (amended July 17 1998) [hereinafter *Norway Act*]; see also *Second Report: Norway*, *supra* note 76 at para 55;

<sup>83</sup> See *The Constitution of the Kingdom of Norway*, art. 110(c).

<sup>84</sup> *Senate Committee*, *supra* note 2 at 19. See footnote 25.

<sup>85</sup> See *Constitution of the Argentine Nation*, s. 75.

<sup>86</sup> *Initial Report of State Parties Addendum: Argentina*, CRC, 1994, UN Doc. CRC/C/8/Add/17 at para 9.

<sup>87</sup> *Initial Report of State Parties: Argentina*, CRC, 1993, UN Doc. CRC/C/8/Add.2 [hereinafter *Initial Report: Argentina*]; *Second Periodic Report of States: Argentina*, 2002, CRC, UN Doc. CRC/C/70/Add.10 [hereinafter *Second Report: Argentina*].

<sup>88</sup> Committee on the Rights of the Child, *Concluding Observations: Argentina*, CRC, 31<sup>st</sup> Session, UN Doc. CRC/C/15/Add.187 (2002) [hereinafter *Observations: Argentina*].

<sup>89</sup> See *Observations: Argentina*, *supra* note 88.

Convention. The province of Salta is undergoing policy and legislative review in order to harmonize with the Convention.<sup>90</sup>

- In November 2001, the Chamber of Deputies (the lower house of Argentina's Parliament) passed a draft law on the comprehensive protection of the rights of the child.<sup>91</sup>
- The national Government, through the Ministry of Health and Social Welfare, convened a meeting of all provincial governments and the municipality of the City of Buenos Aires for the purpose of developing coherent policies for the comprehensive protection of children and young persons throughout the country.<sup>92</sup>
- The National Council for Children and the Family was established with the aim of promoting and developing a better system of care for families or family members at risk.<sup>93</sup>
- The Federal Council for the Protection of Children and the Family met in 1992 and was joined by federal government officials, the provinces and the municipalities, representatives of various churches and religious denominations, non-governmental organizations, UNICEF, professionals, and social workers to draft a national program.
- An independent Office of Ombudsman for the Rights for the Child was established at the federal level through legislation, adopted on 23 September 1998. With the support of an interdisciplinary team of professionals, the Ombudsman was given the mandate of furthering the protection and promotion of children's rights, including investigating complaints, making public the situation of children and the promotion of child rights, and submitting proposals for legislative change.<sup>94</sup>

The UN Committee, in its Concluding Observations, has continued to urge Argentina to adopt the draft legislation on the comprehensive protection of child rights, increase the effectiveness of the Ombudsman, and ensure that all provinces comply with the provisions and principles of the Convention.<sup>95</sup>

Although the CRC is legally binding in Argentina, the federal government continues to face challenges with regard to the full implementation of the CRC, such as in the area of cooperation among the provinces through legislative reform, and in the context of ongoing economic, political and social crises.<sup>96</sup> Yet in spite of these challenges, Argentina's commitment to the domestic application of international treaties is clearly evidenced by their automatic integration into domestic legislation, and the constitutional status given to the CRC.

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<sup>90</sup> See *Second Report: Argentina*, *supra* note 87.

<sup>91</sup> *Observations: Argentina*, *supra* note 88 at 3.

<sup>92</sup> *Initial Report: Argentina*, *supra* note 95 at para. 28

<sup>93</sup> *Ibid.* at para. 36.

<sup>94</sup> *Ibid.* at para. 17.

<sup>95</sup> See *Observations: Argentina*, *supra* note 97.

<sup>96</sup> *Ibid.* at para. 10.

## INTERNATIONAL LESSONS LEARNED FROM VARIOUS EXAMPLES OF CHILDREN'S OMBUDSPERSONS AND COMMISSONERS

The UN Committee considers the establishment of independent national human rights institutions an important mechanism to advance the realization of children's rights; it falls within the commitment made by States Parties upon ratification to ensure the implementation of the CRC.<sup>97</sup> The essential elements of such independent institutions were adopted by the UN General Assembly in 1993 and become known as the Paris Principles.<sup>98</sup> In 2002, the UN Committee issued a General Comment elaborating on the essential elements of such institutions and activities.<sup>99</sup> The Paris Principles also formed the basis for the Standards for Independent Human Rights Institutions for Children, which was adopted by the European Network of Ombudspersons for Children (ENOC) in 2003.<sup>100</sup>

As per the Paris Principles and the guidelines of UN Committee and ENOC, independent national human rights institutions should: have a broad mandate established through legislation and anchored on the CRC; have independence from political influence and financial control; have staffing that is a pluralistic representation of society; give priority to Aboriginal affairs; be accessible and confidential to children; and ensure the meaningful participation of children. Furthermore, the competence and responsibilities of the national human rights institution should also include: monitoring the implementation of the CRC; investigating systemic issues across Canada; establishing effective complaints mechanisms and handling complaints in areas outside the jurisdiction of provinces; raising awareness for child rights; acting as a liaison between provincial institutions, and cooperating with international institutions; and reporting to Parliament and the UN Committee on the results and recommendations arising from its activities.<sup>101</sup>

There has been a growing acceptance by States Parties of the role that independent national human rights institutions can play as complementary to effective government structures in the advancement on children's rights. A study conducted by the UNICEF Innocenti Research Centre on the impact of the implementation of the CRC concluded that there has been a rapid proliferation of independent national institutions for children's rights since the almost universal ratification of the CRC, with over 60 such institutions for children in at least 38 States.<sup>102</sup> The establishment of these institutions has occurred most rapidly in Europe, with 35 independent and legislatively mandated child rights institutions in 26 countries.<sup>103</sup>

Norway and Sweden established their national institutions by way of abbreviated Acts outlining general functions and duties, while New Zealand, England and Scotland established their respective Children's

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<sup>97</sup> Committee on the Rights of the Child, General Comment No. 2, *The Role of Independent National Human Rights Institutions in the Promotion and Protection of the Rights of the Child*, CRC, 32<sup>nd</sup> session, UN Doc. CRC/GC/2002/2 (2002) at para 1 [hereinafter Comment No. 2].

<sup>98</sup> Principles Relating to the Status of Independent National Human Rights Institutions, UN General Assembly Resolution 48/134 (1993) [hereinafter *Paris Principles*].

<sup>99</sup> *Comment No. 2*, *supra* note 97.

<sup>100</sup> The European Network of Ombudspersons for Children, *Standards for Independent Human Rights Institutions for Children*, online: <http://www.barneombudet.no/cgi-bin/barneombudet/imaker?id=3659> (accessed 5 October 2006) [hereinafter *ENOC Standards*]. ENOC was established in 1997 to encourage the fullest possible implementation of the CRC, to support collective lobbying for children's rights, to share information, approaches and strategies, and to promote the development of effective independent offices for children strategies among member institutions. See European Network of Ombudspersons, *About ENOC*, online: <http://www.ombudsmet.org/enoc/about/index.asp> (accessed: .4 October 2006).

<sup>101</sup> These elements have been compiled from The Paris Principles, *supra* note 98; Comment No. 2, *supra* note 97; ENOC Standards, *supra* note 100; and *Senate Committee*, *supra* note 2 at 84-95.

<sup>102</sup> *UNICEF Summary Report*, *supra* note 21 at 9.

<sup>103</sup> UNICEF Innocenti Research Centre, *The General Measures of the Convention on the Rights of the Child: The Process in Europe and Central Asia* (Florence: Innocenti Publications, 2006) at 18.

Commissioners through more detailed legislation.<sup>104</sup> Some countries, such as Austria, have established independent child rights institutions at the regional or municipal level as complementary mechanisms to national ombudspersons, allowing them to be more accessible to children, and enabling them to respond more effectively to the violations of children's rights.

The following case studies on the establishment of independent institutions in Norway, Sweden, New Zealand, England, Scotland and Austria can serve as examples to Canada on the role that such institutions can play in advancing the rights of children. In addition, a chart has been provided in Appendix V, summarizing the functions, powers and responsibilities of independent human rights institutions for children in these countries as well as nine Canadian provinces.

## I. Norway

In 1981, Norway became the first country to establish an ombudsman through legislation. In 1994, following Norway's ratification of the CRC, the role and mandate of the Office of Commissioner for Children was reviewed, resulting in the amended *Act Relating to the Ombudsman for Children*;<sup>105</sup> it is accompanied by the *Instructions for the Ombudsman for Children*.<sup>106</sup> The function of the Ombudsman is to promote the interests of children in relation to both public and private authorities, and to follow up the development of the conditions under which children grow up.<sup>107</sup>

The Ombudsman for Children has contributed to the advancement of children's rights in Norway by encouraging the government to incorporate the CRC into Norwegian legislation; the Ombudsman continues to monitor its implementation. In 2005, the Ombudsman worked to ensure that local policies for children and youth were based on the CRC, engaged child welfare departments in dialogue to strengthen children's legal protection, and spread information and teaching plans on the CRC to schools.<sup>108</sup> The Ombudsman also undertook projects in a number of areas affecting children and youth, including the impact of technology on children, protection against violence in the family, bullying, and children's rights in the school system.<sup>109</sup>

The Ombudsman for children has also made concrete efforts to dialogue with children and increase the participation of children and youth in society by establishing channels through which they can make their views known. The Children's Powerline was established in 1989 as a way for children to telephone in and leave messages expressing concerns or asking questions. In 2005, the Ombudsman decided to switch the Powerline from a phone-based system to the Internet, thus making it easier for children and youth to express themselves without the same brevity required on the Powerline answering machine.<sup>110</sup>

Furthermore, in 2005, the Ombudsman established a Youth Council consisting of 12 students from different secondary schools in the Oslo area in order to advise the Ombudsman for Children for a period of one year. In addition, a Children's Internet Parliament was established to provide an

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<sup>104</sup> UNICEF Summary Report, *supra* note 10 at 11.

<sup>105</sup> Norway Act, *supra* note 82

<sup>106</sup> Established by Royal Decree on September 11, 1981 with the most recent changes made by Royal Decree of July 17, 1998 [hereinafter *Norway Instructions*].

<sup>107</sup> Norway Act, *supra* note 82, s. 3. For a summary of legislation, see Appendix IV.

<sup>108</sup> Ombudsman for Children, *Annual Report 2005*, online: <http://www.barneombudet.no/cgi-bin/barneombudet/imaker?id=18066&visdybde=2&aktiv=18066> (accessed 27 September 2006) at 8.

<sup>109</sup> See The Ombudsman for Children in Norway, *Focus Areas*, online: <http://www.barneombudet.no/cgi-bin/barneombudet/imaker?id=3510&visdybde=1&aktiv=3510> (accessed 27 September 2006).

<sup>110</sup> The Ombudsman for Children in Norway, *Communicating with Children and Youth*, online: <http://www.barneombudet.no/cgi-bin/barneombudet/imaker?id=3499&visdybde=1&aktiv=3499> (accessed 24 October 2006).

opportunity for student councils from 70 schools across the country to make suggestions to the Ombudsman from a set of defined problems. The student councils answer questions and discuss issues via the Internet.<sup>111</sup>

Norway was the first to establish an Ombudsman for Children, and revisited the mandate of the Office in order to align itself to the CRC. Although the Act is not very detailed, the mandate is broadly based and includes investigating complaints, monitoring the implementation of the CRC, and the development of education programmes. Through its flexibility and holistic approach to activities and the participation of children, the Ombudsman has substantially contributed to the advancement of children's rights in Norway.

## 2. Sweden

Sweden established the Office of the Children's Ombudsman in 1993 through the *Children's Ombudsman Act*.<sup>112</sup> It was the first State Party to explicitly anchor the mandate of a national independent institution for children's rights to the CRC.<sup>113</sup> The Ombudsman's main duty is to represent and promote the rights and interests of children and young people as set forth in the CRC by encouraging the implementation of the CRC and monitoring compliance of domestic laws and statutes, and influencing the attitudes of decision-makers and the public.<sup>114</sup> As a result of the activities of the Children's Ombudsman, the principle of the "best interests of the child" has been incorporated into domestic legislation dealing parenting, immigration, and social services.<sup>115</sup> The Ombudsman has also recently devoted special attention to the issues of bullying in schools and certain municipal activities.<sup>116</sup>

In 1999, the Government assigned the Children's Ombudsman a key role in the development and promotion of the national strategy to implement the CRC at the national and local level. Originally a three-year mandate, this role was made permanent by an act of Parliament in 2002.<sup>117</sup> Some of the activities have included conducting child impact assessments in connection with all government decisions affecting children, holding conferences and training sessions with all government employees, municipalities and counties throughout Sweden, and introducing systems for monitoring progress in the implementation of the CRC at the regional level.<sup>118</sup>

In order to involve children in a meaningful way and obtain their views on various issues, the Ombudsman regularly communicates with 117 contact classes and teachers across the country. The Ombudsman has also set-up a 14-member child and youth council, with the view of establishing broader and deeper contact with children and youth throughout Sweden.<sup>119</sup>

Although the Children's Ombudsman for Sweden has a limited mandate of monitoring the implementation of the CRC and assessing the situation of child rights in the country, Canada can take

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<sup>111</sup> *Annual Report 2005*, supra note 117 at 11-12.

<sup>112</sup> *Sweden Act*, supra note 70.

<sup>113</sup> *Senate Committee*, supra note 2 at 88.

<sup>114</sup> The Children's Ombudsman does not have the mandate to investigate individual complaints despite recommendations from the Committee. See *Observations: Sweden*, supra note 68 at para. 7. See also Children's Ombudsman, *About the Children's Ombudsman*, online: <http://www.bo.se/Adfinity.aspx?pageid=85> (accessed 27 September 2006). For a summary of legislation, see Appendix V.

<sup>115</sup> Children's Ombudsman, *Background*, online <http://www.bo.se> (date accessed: 06 September 2006).

<sup>116</sup> *Second Report: Sweden*, supra note 66 at para. 91.

<sup>117</sup> *Third Report: Sweden*, supra note 66 at para. 44.

<sup>118</sup> *Ibid.* at paras. 45-59.

<sup>119</sup> *Ibid.* at para 62.

note of the achievements in advancing the rights of children in the country. As a result of its activities, the Ombudsman has been able to make significant progress in incorporating the provisions of the CRC into law, policy and strategy, taking into consideration the views of children through its process of consultation.

### 3. New Zealand

The role of the Children's Commissioner in New Zealand was first established under the *Children, Young Persons and their Families Act 1989*.<sup>120</sup> Initially, the Department of Social Welfare administered the Office of the Commissioner, however, concerns over the independence of this institution expressed by the UN Committee<sup>121</sup> led to a proposal for establishing the Commissioner under a separate statute. The *Children's Commissioner Act 2003*<sup>122</sup> was enacted, strengthening the independence and the role of Children's Commission, and linking its functions and powers to the Convention.

The Children's Commissioner's functions are extensive and include the power to investigate any decision or recommendation related to any child, promote accessible and effective complaint mechanisms for children, and, raise awareness and understanding of the CRC. The Commissioner's Office also handles a growing number of inquiries, including regular inquiries about the Convention and issues relating to children and the law; the Commissioner uses the Convention as a basic standard in considering policy and legislation affecting children.<sup>123</sup> The meaningful participation of children and youth is promoted through the Young Peoples Reference Group, an advisory group composed of 9 young people between the ages of 15 and 18 representing the diversity of children in the country, who advise the Commissioner on various issues.

During 2004 and 2005, the Office of the Children's Commissioner worked cooperatively with a number of governmental and non-governmental agencies in the areas of violence against children and child poverty.<sup>124</sup> It provided 27 submissions on matters before Parliament, completed research projects and undertook a review of legislative compliance with the CRC by government. The Commissioner also ran intensive workshops across the country and published quarterly newsletters about children's issues.<sup>125</sup>

Based on its commitment to the CRC, New Zealand established a Children's Commissioner through detailed legislation to ensure its independence. With a broad mandate and through its activities and the participation of children, this institution has begun to advance the rights of children in New Zealand.

### 4. England

The Children's Commissioner for England is an independent office established by the *Children Act 2004*.<sup>126</sup> The Children's Commissioner's main function is to promote awareness of the views and interests of children in England, having regard to the CRC. The Children's Commissioner for England

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<sup>120</sup> 1989 No. 2004.

<sup>121</sup> Committee on the Rights of the Child, *Concluding Observations: New Zealand*, CRC, 14<sup>th</sup> Session, UN Doc CRC/C/15/Add.71 (1997) at para. 24.

<sup>122</sup> 2003 No. 121 [hereinafter *New Zealand Act*]. For a summary of legislation, see Appendix V.

<sup>123</sup> *Second Periodic Report of States: New Zealand, 2003*, CRC, UN Doc.CRC/C/93/Add.4 at para. 9

<sup>124</sup> Children's Commissioner, *Annual Report 2005*, online:

[http://www.occ.org.nz/childcomm/resources\\_links/reports\\_publications?eZSESSIDchildcomm=20450232b97244a3481990593943c76e](http://www.occ.org.nz/childcomm/resources_links/reports_publications?eZSESSIDchildcomm=20450232b97244a3481990593943c76e) (accessed 27 September 2006) at 7.

<sup>125</sup> *Senate Committee*, *supra* note 2 at 91.

<sup>126</sup> 2004 Chapter 31 [hereinafter *England Act*]. For a summary of legislation, see Appendix V.

must also work with the Children's Commissioner for Wales, the Commissioner for Children and Young People in Scotland, and the Commissioner for Children and Young People for Northern Ireland to champion the interests of children across the country and bring their concerns and views to the national arena.<sup>127</sup>

The participation of children was encouraged from the outset: a total of 40 children and young people were selected from across the country to participate in the recruitment of supporting staff to the Children's Commissioner; they provided input into the recruitment and interview process, and participated in the final decision-making. Another 25 children, including those with physical and learning disabilities, were asked to assist in the plan and design of the building.

In its initial year, the Children's Commissioner for England concentrated on establishing a presence and setting-up a national policy. Children were asked to tell the Commissioner what priorities the office should focus on for the 2006/2007 year. The Office of the Children's Commissioner is currently focusing on eight themes: children and young people in society; discrimination; youth justice and antisocial behaviour; bullying; asylum seeking and immigration; vulnerable children; disabled children and young people; and the health and wellbeing of children and young people.<sup>128</sup> In the year ahead, the Children's Commissioner will continue to expose issues that children and young people identify as key to improving their lives.

## 5. Scotland

In Scotland, a Commissioner for Children and Young People was created after several years of campaigning by organizations working with children and young people. Following an investigation and report to the Education, Culture and Sports Committee, a bill for the establishment of a Children's Commissioner was introduced to the Scottish Parliament in December 2002.<sup>129</sup> The *Commissioner for Children and Young People (Scotland) Act*<sup>130</sup> was passed by the Parliament on 26 March 2003 and received Royal Assent on 1 May 2003. The first Commissioner was appointed in April 2004 to promote and safeguards the rights of children and young people.

In 2005, the Commissioner launched a poll to find out what changes children wanted most to make their lives better; a total of 16,000 responses were received through email, voting cards, and text messages.<sup>131</sup> The results of the poll<sup>132</sup> and a consultation with youth organizations<sup>133</sup> led to the development of an Action Plan for 2006-2008, with the intention of working towards a better balance between protection, fun, adventure and healthy relationships.<sup>134</sup>

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<sup>127</sup> *England Act*, *supra* note 126, parts 5-7.

<sup>128</sup> Office of the Children's Commissioner, Annual Report 2002/2006 at 17, online: <https://www.childrenscommissioner.org/documents/Annual%20report%20final%20-%20password%20protected.pdf> (accessed 24 October 2006).

<sup>129</sup> Scotland's Commissioner for Children and Young People, *About SCCYP*, online: [http://www.sccyp.org.uk/webpages/about\\_ourhistory.php](http://www.sccyp.org.uk/webpages/about_ourhistory.php) (accessed 24 October 2006).

<sup>130</sup> *Commissioner for Children and Young People (Scotland) Act 2003* [hereinafter *Scotland Act*]. For a summary of legislation, see Appendix V.

<sup>131</sup> SCCYP, *Action Plan 2006-2008: Safe, Active at 6-7 Happy*, online: [http://www.sccyp.co.uk/admin/04policy/files/spo\\_045215SCCYP%20ActPlanV5.pdf](http://www.sccyp.co.uk/admin/04policy/files/spo_045215SCCYP%20ActPlanV5.pdf) (accessed 24 October 2006).

<sup>132</sup> The top seven issues of concern for children and young people were: things to do, bullying, safer streets, parents splitting up, education, transport, and health. See SCCYP, *ibid.*

<sup>132</sup> *Ibid.* at 8-9.

<sup>133</sup> Three broad issues of concern were raised: promoting proportionate protection, improving family support, and promoting social inclusion.<sup>133</sup> See *Action Plan 2006-2008*, *ibid.*

<sup>134</sup> *Ibid.* at 3.

Some of the initiatives in the Action Plan include sending out Detective Kits so that children can map out activities in their area and involve local officials and other agencies to investigate barriers, and specify good examples of facilities for children and youth; having a confidential inbox where children can send emails about issues that concern them; and having a discussion board for specific issues. Through these measures and initiatives, the Commissioner for Children and Young People in Scotland is committed to encouraging the participation of children and young people in meaningful ways.

## 6. Austria

In Austria, the Youth Welfare Act of 1989 promoted the establishment of local ombudspersons in each of the 9 provinces. Between 1989-1995, local offices were established in Burgenland, Kärnten, Niederösterreich, Salzburg, Styria, Tyrol, Oberösterreich, Vienna, and Vorarlberg under provincial child welfare legislation.<sup>135</sup> The mandates of the local ombudspersons differ from province to province, but their primary task is to counsel minors, persons legally responsible for children and legal guardians in all matters relating to the child, as well as to assist in cases of disagreement and dispute about care and upbringing.<sup>136</sup> Some of the projects carried out by the local ombudspersons have included school mediation projects, free legal representation in criminal proceedings, securing psychosocial support for under-age victims of violence and abuse, peer-to-peer discussion and advice centres, and promoting children's rights through publications and workshops.<sup>137</sup>

In 1991, a federal ombudsperson was established under the Federal Ministry of the Environment, Youth and the Family to respond to federal issues and collaborate with the local ombudspersons.<sup>138</sup> The tasks of the Federal Ombudsperson include publicly endorsing non-violent education, promoting a child-friendly society, collaborating with the provincial ombudspersons' systems for children and adolescents, and working in partnership with public and private youth welfare institutions. The Federal Ombudsperson also deals with complaints of children or their guardians regarding alleged violations of children's rights.<sup>139</sup> In order to further these tasks, a telephone hotline was created for children and parents to contact the federal ombudsperson at the cost of a local call. Canada can follow the lead of Austria's initiative to establish a Federal Children's Ombudsperson, in addition to the independent child rights institutions in each province.

## RECOMMENDATIONS FOR LEGISLATIVE REFORM IN CANADA

Thus far, Canada has been unwilling to directly incorporate the Convention by means of enabling or other direct legislation. According to his testimony before the Senate Committee, the Minister of Justice<sup>140</sup> explained that,

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<sup>135</sup> European Network of Ombudspersons: Austria, *History of the Office*, online: <http://www2.ombudsnet.org/Ombudsmen/Austria/austria.htm#HISTORY%20OF%20THE%20OFFICE> (accessed 27 September 2006).

<sup>136</sup> *Second Periodic Report of States: Austria, 2005*, CRC, UN Doc. CRC/C/83/Add. 8 at para. 136.

<sup>137</sup> European Network of Ombudspersons: Austria, *History of the Office*, *supra* note 135.

<sup>138</sup> *Initial Report of State Parties: Austria, 1997*, UN Doc. CRC/C/11/Add.14 at para. 24 [hereinafter *Initial Report: Austria*].

<sup>139</sup> *Ibid.* at para. 24.

<sup>140</sup> The Minister of Justice at the time of the hearing before the Standing Senate Committee was Erwin Cotler. Since then, the government has changed and a new Minister is in place. As of yet, the views of the new Minister on this matter have not yet been clarified.

Even though Canada's laws do not always match the explicit wording of the Convention, this consultation process ended in an assurance that the standards contained in Canada's laws are now either equal to or even higher than those set out in the Convention itself.<sup>141</sup>

Despite these assurances, the UN Committee has repeatedly raised concerns that Canada has not lived up to its obligations under the Convention, especially in the areas of child poverty, children in migration, Aboriginal children, and corporal punishment.<sup>142</sup> The UN Committee and child rights advocates alike have called for a more effective mechanism of implementation, including the need for legislative reform; these calls have been echoed in the Senate Committee's interim report<sup>143</sup>.

World Vision Canada recommends a staged process of compliance in the area of legislative reform, beginning with the adoption of enabling legislation. Next, Canada needs to engage in a comprehensive review of existing legislation by establishing a permanent body for the coordination of standards and principles in legislation. This process of implementation would be assisted by an enhanced role of Parliament. Finally, it is recommended that a federal Children's Commissioner be established through legislation as a complementary independent body to government structures in the advancement on children's rights.

## I. Adopt Enabling Legislation

Enabling legislation would send a clear and unambiguous message regarding Canada's commitments to child rights. In Norway's case, the government pointed out that although Norwegian legislation largely meets the requirements of the Convention without such incorporation, and in some cases provided children stronger rights, it acknowledged that direct incorporation would strengthen the legal position of children, and at the same time sending the signal that it took the Convention seriously.<sup>144</sup>

As suggested by the Senate Committee, the process does not have to be an onerous one and could simply involve tabling the treaty before Parliament, accompanied by a formal statement that the federal government agrees to comply with the treaty.<sup>145</sup>

In Sweden, a commitment to the Convention was demonstrated through the approval of Government Bill 1989/90:107, which included a review of articles and a declaration that national legislation was compatible with the Convention. The parliamentary debate lasted 25 minutes.<sup>146</sup>

In Quebec, the Commission des droits de la personne et des droits de la jeunesse proposed amending the Quebec *Charter*<sup>147</sup> to include a statement that it the Charter is inspired by international legal instruments relating to human rights and freedoms.<sup>148</sup> Such international and domestic examples can provide guidance to the federal Government of Canada.

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<sup>141</sup> *Senate Committee, supra note 2 at 62.*

<sup>142</sup> *Ibid.* at 53.

<sup>143</sup> *Ibid.*

<sup>144</sup> *Third Report: Norway, supra note 76 at para. 22.*

<sup>145</sup> *Senate Committee, supra note 2 at 76.*

<sup>146</sup> S. Ek, *Strategies for Political Lobbying on the Implementation of the Rights of the Child*, Report of the Third Regional Meeting of NGO Forums in Europe Parliament in Vilnius, Lithuania on October 30-31, 2002, at p. 49, online: <http://www.crin.org/docs/resources/publications/NGOCRC/subgroup-NationalCoalitions-Vilnius-Report-2003.doc> (accessed 22 September 2006).

<sup>147</sup> *Quebec Charter, supra note 55.*

<sup>148</sup> *Senate Committee, supra note 2 at p. 83.*

## 2. Conduct a Comprehensive Review of Legislation

Canada must conduct a comprehensive review of all legislation and related administrative guidelines to ensure coordination of legislation and the setting of national standards, and to ensure compliance with the Convention on an article by article basis, as well as holistically. This should be done through the establishment of a permanent body that is representative of government departments, non-governmental organizations, professionals, and children. This body must be empowered to conduct an ongoing review of legislation, policies and services, and make recommendations and criticisms of action or inaction to facilitate change, conduct studies of court cases on the interpretation or application of provisions on the Convention, and become involved in the education of public and legal professions on the provisions of the Convention.<sup>149</sup>

There are many international examples that Canada could draw upon with regards to ensuring compliance of legislation with the CRC. For instance, South Africa established a permanent Law Reform Commission in 1973, whose aim is the renewal and improvement of the law of South Africa on a continuous basis. The South African Law Reform Commission introduced a number of statutes affecting children. In addition, the South African Law Commission appointed committees to review legislation in specific areas. For instance, a project committee was appointed to revise the *Child Care Act*, No. 74 of 1983. After an extensive process of consultation with other national departments including Justice, Education, Health, Labour, Safety and Security, the provincial governments, non-governmental organizations and service providers, the *Children's Act*, No. 38 of 2005 was passed by Parliament on December 15, 2005 and assented to on June 19, 2006. The *Children's Act* endeavours to provide a comprehensive and coordinated approach to the care and protection of children, including sections addressing parental responsibilities, protections, health, adoption, inter-country adoption, and child abduction. It also incorporates the principles of the child's best interests and child participation.<sup>150</sup>

In Sweden, the Government appointed a parliamentary commission, the Children's Committee, to carry out a wide-ranging review of Swedish legislation and practice. It was given the task of analyzing any conflicts in the application of the "best interests" principle under the Convention with Swedish law and practice, and establishing greater clarity and a wider consensus regarding the implications of such application.<sup>151</sup> The necessity of such a body in Canada is evident by the inconsistent approaches to some of the principles under the Convention. For instance, Canada's federal *Divorce Act*<sup>152</sup> states that the best interests of the child shall be the only consideration in determining matters of custody and access. However, the federal government has admitted that there is no consistent definition of the "best interest" principle as applied by the courts, drawing criticism that the principle, as used, is arbitrary and unpredictable.<sup>153</sup>

Although Canada conducted a review of legislation prior to ratification, nothing has been established to ensure a process of ongoing review whereby legislation is considered article by article, and holistically, against the Convention. The testimony of many witnesses to the Senate Committee has clearly established that there are numerous glaring examples of how Canada's federal laws do not conform to the standards of the Convention such as:

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<sup>149</sup> *Twenty-second Session, supra* note 21 at 69.

<sup>150</sup> Lois Law, *The Children's Act: Briefing Paper 153*, Southern African Catholic Bishops' Conference, February 2006, online: <http://www.sarpn.org.za/documents/d0001962/index.php> (accessed 22 Sept 22 2006).

<sup>151</sup> *Second Report: Sweden, supra* note 66 at para. 87.

<sup>152</sup> R.S.C. 1985, c. 3 (2<sup>nd</sup> Supp).

<sup>153</sup> *Second Report: Canada, supra* note 15 at para. 62.

- Section 43 of the *Criminal Code*,<sup>154</sup> which allows for the “reasonable correction” of a child by force, contrary to articles 3, 19, 28(2) and 37 of the CRC, and General Comment No. 8<sup>155</sup>;
- The *Immigration and Refugee Act*<sup>156</sup> which does not adequately incorporate the principles of the CRC;
- The voluntary recruitment into the armed forces from the age of 16 years without measures to give priority to those who are older, pursuant to article 38(3) of the CRC and article 3(2) of the Optional Protocol on the Involvement of Children in Armed Conflict<sup>157</sup>; and
- The expanded use of adult sentences, contrary to articles 3, 37 and 40 of the CRC.

As has been demonstrated by the examples of South Africa and Sweden, the establishment of a permanent body that would carry out this work is an essential element to the full realization of children’s rights in Canada. Moreover, it is also important to emphasize that if such a body were to be established, it would need to be instructed to carry out its work in an open and transparent manner, in consultation with civil society and children in particular.

### 3. Enhance the Role of Parliament

The Senate Committee heard testimony from various child rights advocates that ratification and implementation of the Convention has not been an open process. However, transparency and accountability are essential to creating an atmosphere of legislative change and ensuring the enforcement of child rights. This can be done by enhancing the role of Parliament, and engaging in discussion with the provinces and territories.

The Parliament of Canada currently does not play a role in the ratification, application or implementation of international treaties, which if not directly incorporated into domestic legislation, bypass the Parliamentary process.<sup>158</sup> Yet, this process is important, as:

[f]inding a voice for Parliament [would] ensure accountability to the public, enhancing jurisdictional cooperation and coordination, raising public awareness concerning Canada’s commitments, and establishing a more formal process to ensure compliance with those commitments.<sup>159</sup>

Sweden has adopted the practice of tabling the UN Committee’s Concluding Observations, and inviting authorities and non-governmental organizations to comment.<sup>160</sup> Witnesses before the Senate Committee recommended that Canada’s country reports, the UN Committee’s Concluding Observations, and any government responses should be tabled in Parliament and subjected to scrutiny

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<sup>154</sup> R.S.C. 1985, c. C-46.

<sup>155</sup> Committee on the rights of the Child, General Comment No. 8 (2006), The Right of the Child to Protection from Corporal Punishment and Other Cruel or Degrading Forms of Punishment (arts. 19; 28 para. 2; and 37 inter alia), CRC, UN Doc. RCR/C/GC/8.

<sup>156</sup> S.C. 2001, c. 27.

<sup>157</sup> UN General Assembly Resolution A/RES/54/263 (2000).

<sup>158</sup> *Senate Committee, supra* note 2. at 35.

<sup>159</sup> *Ibid.* at 77.

<sup>160</sup> *Ibid.* at 79; Ek, *supra* note 146 at 49.

by interested stakeholders,<sup>161</sup> thus providing the opportunity to assess the adequacy of government actions or whether existing laws are in compliance with the CRC.<sup>162</sup>

Including Parliament in the process of the implementation of the CRC is fundamental. In a Conference on the Law and Parliament, The Right Honourable Beverley McLachlin, P.C. remarked that the *Constitution Acts of 1867 and 1982* confer powers on Parliament and the Provincial Legislatures to introduce and pass laws within their areas of jurisdiction. They alone possess this power. However, this power has often been delegated to the executive branch - the Prime Minister and supporting Ministers – whose role is to enforce the law. In conclusion, she reiterated that:

The role of each branch is different and complementary. The essence of each remains the same through the centuries. The legislative branch's role is to make laws. The executive branch's role is to enforce the law. And the judicial branch's role is to interpret the law and resolve disputes arising from the law. Each branch is a vital part of our democracy. Each branch must discharge its role with integrity and respect for the proper constitutional roles of the other branches. To do less is to diminish our democracy and imperil our future.<sup>163</sup>

The role of Parliament must not be overlooked. It has the capacity to influence the decisions and actions of the Government, but it also connects with communities to influence opinions and actions, and raise awareness on issues concerning the rights of children.<sup>164</sup>

#### **4. Establish a Children's Commissioner**

The UN Committee has recommended that Canada establish a federal ombudsperson's office to be responsible for children's rights and ensure appropriate funding for its effective functioning in accordance with the principles for independent national human rights institutions.<sup>165</sup> The Senate Committee also made the same recommendation:

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.<sup>166</sup>

As discussed above, nine provinces have legislation establishing an office or service dedicated to children; however, the UN Committee noted that not all of the provincial commissioners are adequately empowered to exercise their tasks in accordance with the Paris Principles.<sup>167</sup> A federal independent institution is imperative to coordinate and establish standards for effective independent offices for children across the provinces and territories, and to address systemic issues arising at the national level. Furthermore, a federal institution is necessary to address issues that are outside of the jurisdiction of provincial and territorial governments, such as the criminal justice system, immigration and refugee

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<sup>161</sup> *Senate Committee, supra* note 2 at 78-9.

<sup>162</sup> *Ibid.* at 74.

<sup>163</sup> Right Honourable Beverley McLachlin, P.C., *Respecting Democratic Roles* (Conference on the Law and Parliament, Ottawa, Ontario, 22 November 2004), online: [http://www.scc-csc.gc.ca/aboutcourt/judges/speeches/DemocraticRoles\\_e.asp](http://www.scc-csc.gc.ca/aboutcourt/judges/speeches/DemocraticRoles_e.asp) (accessed: 4 October 2006).

<sup>164</sup> *Senate Committee, supra* note 2 at 80.

<sup>165</sup> *Observations: Canada, supra* note 38 at paras. 14-15.

<sup>166</sup> *Senate Committee, supra* note 2 at 96.

<sup>167</sup> *General Comment No. 5, supra* note 7 at para. 14.

issues, Aboriginal affairs, recruitment into armed forces, custody and access in divorce matters, and youth employment.

Thus, World Vision Canada affirms the Paris Principles and recommends that each element be specifically incorporated in national legislation. World Vision also recognizes the importance of and wishes to build upon the recommendations made by the Senate Committee in its interim report concerning the establishment of a federal Children's Commissioner. In the following sections, recommendations (a) through (h) complement and strengthen the Senate Committee's existing recommendations; (i) through (m) are proposed as additional considerations for the Senate Committee, as elements that should be incorporated into legislation establishing a federal Children's Commissioner.

### **a) Established Through Legislation**

The office of the Children's Commissioner must be legislatively mandated in order to give independence, authority and legitimacy to its powers and duties. Legislation can be concise, as in the case of Norway or Sweden, or detailed, as in the cases of New Zealand, England and Scotland. However, the mandate should be clearly worded and include as broad a scope as possible to promote and protect children's rights.

The Children's Commissioner must have a statutory responsibility to have regard to the Convention in fulfilling its responsibilities. While Norway, Sweden, New Zealand, England and Scotland invoke the CRC when setting out the functions and powers of their respective Commissioners, New Zealand has the most comprehensive example: The *New Zealand Act*<sup>168</sup> requires the Commissioner "to have regard to the Convention when carrying out the Commissioner's functions and powers." Furthermore, Section 3(c) confers "additional functions and powers on the Commissioner to give better effect in New Zealand to the CRC". The *New Zealand Act* also appends the CRC, thus emphasizing its centrality to the Commissioner's role.

### **b) Independence**

The Children's Commissioner must focus on promoting and protecting the rights of children without being influenced by political agendas and sensitivities. It must be independent from the government, have freedom to consider issues within its competence, and be "endowed with real legal powers in order for it to effectively monitor implementation and protection of children's rights."<sup>169</sup>

The process of appointment is a factor in establishing independence; it must be transparent, and the appointment for a fixed number of years with grounds for removal specified. A Commissioner who is appointed and accountable to Parliament would reinforce this principle of independence. The Children's Commissioner must also have freedom from any financial control by having adequate funding, infrastructure and appropriate multi-disciplinary staffing to fulfill its mandate.

The importance of having an independent institution can be observed from Norway's situation. Although neither the Norwegian Parliament nor the Government has the power to instruct the Ombudsman, the Ombudsman is administratively under the jurisdiction of the Ministry for Children and

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<sup>168</sup> *New Zealand Act*, *supra* note 122, s. 3(d).

<sup>169</sup> *Senate Committee*, *supra* note 2 at 86.

Family Affairs.<sup>170</sup> According to the testimony of Norway's Ombudsman before the Senate Committee, the control exerted by the Ministry for Children and Family Affairs has constrained the Ombudsman's powers, as exemplified by warnings received that certain issues were not appropriate for comment or criticism.<sup>171</sup>

### **c) Aboriginal Affairs**

As recommended by the Senate Committee, the Office of the Children's Commissioner must have a high level officer dedicated to the investigation and monitoring of Aboriginal children's rights which cannot be addressed by provincial advocates because of jurisdictional issues. This role is emphasized due to the particular issues affecting Aboriginal children and their marginalization in Canadian society.<sup>172</sup>

Although no legislation in any of the jurisdictions discussed in this paper specifically mandates the Commissioner to have regard to Aboriginal affairs, the closest example is that of New Zealand. The *New Zealand Act*, under Section 11(c), requires the Commissioner to recognize the diversity of children in the country. The Office of the Children's Commissioner in New Zealand also placed significance and prioritized Aboriginal issues, in part because the current commissioner is an Aboriginal Maori woman.<sup>173</sup> Mandating the Commissioner to have regard to Aboriginal affairs within its functions and duties would break new legislative ground.

### **d) Participation of Children**

The Children's Commissioner must not only speak on behalf of children, but also speak with children to ensure their views are respected, understood and expressed when defining and dealing with issues concerning their rights, as per article 12 of the CRC. The participation of children must be meaningful and empowering to them, taking their views seriously and involving them in the design of complaint procedures and advocacy programmes, as well as other functions of the Commissioner.

This obligation can be statutorily mandated. The *New Zealand Act*<sup>174</sup> not only requires the Commissioner to take serious consideration of the views children and to promote the participation of children in decisions affecting their lives, the it also requires the Commissioner to develop means of consulting with children.

In order to incorporate children's participation into their mandate, commissioners have formed advisory boards composed of children, and implemented consultative arrangements with schools. For instance, the Children's Commissioner for New Zealand has an advisory group called the Young Peoples Reference Group; Sweden and Norway established a children and youth council, and regularly communicate with a contact list of classes and teachers. The Commissioners for England and Scotland involved children in the development of their action plans. The Commissioner for England further involved children in the selection of its staff and building design.

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<sup>170</sup> The UN Committee recommended that the independence of the Children's Ombudsman for Norway needed to be enhanced. See *Observations: Norway*, *supra* note 87 at para. 10-11.

<sup>171</sup> *Senate Committee*, *supra* note 2 at 86.

<sup>172</sup> *Ibid.* at 91-92.

<sup>173</sup> *Ibid.* at 92.

<sup>174</sup> *New Zealand Act*, *supra* note 122, ss. 11(b), 12(1)(j) and 14.

### **e) Monitor the Implementation of Child Rights**

One of the functions of the Children's Commissioner must be to monitor the implementation of the CRC across Canada as complementary to government structures in the advancement of children's rights, and ensure government accountability to children and other citizens. The Children's Commissioner should conduct an ongoing examination of federal legislation, services, and funding of programmes, and promote their harmonization with the CRC by making recommendations, assessments, and criticisms of government action or inaction to facilitate change.

The Children's Ombudsman for Sweden is the most active in this regard. For instance, the *Sweden Act*<sup>175</sup> requires the Children's Ombudsman to ensure "that laws and other statutes and their application" agree with the CRC. Furthermore, Section 3(1) empowers the Ombudsman to propose amendments to laws and other measures in order to accommodate the rights and interests of children. As a result of this mandate and the recommendations by the Children's Ombudsman, the "best interests" principle was incorporated in a number of statutes, as identified above.

### **f) Investigation of Systemic Issues**

The Children's Commissioner must act as a general spokesperson for children and conduct investigations on systemic issues and complaints affecting children's rights across the country. Even jurisdictions that do not have a mandate to intervene in specific individual cases have been endowed with powers to investigate systemic issues and complaints concerning children generally. For instance, Scotland's Commissioner may investigate a matter if it "raises an issue of particular significance to children and young people generally or to particular groups of children and young people."<sup>176</sup> The results and recommendations of such an investigation must then be reported to Parliament.<sup>177</sup>

In that regard, the Children's Commissioner must have the power to compel and question witnesses, and request documentary evidence necessary for assessing the situation. Scotland's Commissioner may require any person to give evidence or produce documents in that person's control.<sup>178</sup> Also, the Children's Ombudsman in Sweden, whose focus is to represent and promote children's rights, is legislatively empowered to request administrative authorities, municipalities and county councils to report to the Ombudsman or attend discussions.<sup>179</sup>

### **g) Awareness-Raising**

One of the obligations under the CRC is to make its articles and provisions widely known to children and adults. As a result, the Children's Commissioner must have an awareness-raising role as part of its mandate. For instance, the Children's Commissioner could hold public education campaigns on the CRC and on specific issues, publicize findings and opinions, and assist in the development of teaching materials on child rights.

Another component of the role must be to make the Office of the Children's Commissioner and its mandate known to children and adults so that the services can be accessed. For example, the Children's

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<sup>175</sup> *Sweden Act*, *supra* note 70, s. 2.

<sup>176</sup> *Scotland Act*, *supra* note 130, s. 7(2)(a).

<sup>177</sup> *Ibid.* s. 11.

<sup>178</sup> *Ibid.* s. 9.

<sup>179</sup> *Sweden Act*, *supra* note 70, s. 5.

ombudspersons or commissioners for Norway, Sweden, New Zealand, England, and Scotland each have Web sites with information about their mandate, activities, and reports. In Austria, the telephone hotline and the work of the Ombudsperson were widely advertised through interviews in the print media, radio and on television, and lectures were conducted at schools, commissions of inquiry, and national and international conferences.<sup>180</sup>

This requirement is statutorily mandated in England, whereby the Children's Commissioner must take reasonable steps to "ensure that children are made aware of his function and how they may communicate with him."<sup>181</sup> The Scotland Commissioner has the additional requirement of ensuring children and young people are also aware of the ways in which the Commissioner may respond to any issues that they raise.<sup>182</sup>

## **h) Liaison Role**

Another important role of the federal Children's Commissioner must be to act as a liaison between the Canadian Council of Provincial Child and Youth Advocates, in order to facilitate dialogue, sharing of information, investigation of systemic issues, and the establishment of national uniform standards and best practices. The federal Children's Commissioner should also consult and cooperate with international bodies and institutions to learn from each other's experiences and monitor the development of children's rights at the international level. For instance, the Children's Ombudsman for Sweden is required to follow international developments regarding the interpretation and application of the CRC.<sup>183</sup>

## **i) Pluralistic Representation**

The Office of the Children's Commissioner should have a multi-disciplinary staff to represent various elements of society involved in the promotion and protection of human rights such as social workers, lawyers, doctors, nurses, psychologists, sociologists, and those specializing in education. Where staffing is impractical, it should seek the involvement of other human rights and professional organizations. From the jurisdictions studied, Norway is the only one to legislate in this area, stating that the "Ombudsman and his Executive Officers should have varied professional backgrounds."<sup>184</sup>

## **j) Accessibility and Confidentiality**

The Children's Commissioner must be geographically and physically accessible to all children, reaching out to children in vulnerable and disadvantaged situations, such as children in health institutions, children in detention, street children, children with disabilities, refugee and migrant children, and children with special language or cultural needs. Initiatives could include providing free access by telephone, email and other internet-based communications. British Columbia, Saskatchewan, Manitoba, New Brunswick and Newfoundland require that an opportunity be made available, as soon as practicable, for children and youth in a foster home, group home or facility to contact the commissioner in confidence.

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<sup>180</sup> *Initial Report: Austria*, *supra* note 138 at para. 25.

<sup>181</sup> *England Act*, *supra* note 126 s. 2(4)(a).

<sup>182</sup> *Scotland Act*, *supra* note 130, s. 6(2)(a)(i)(ii)(iii).

<sup>183</sup> *Sweden Act*, *supra* note 70, s. 5.

<sup>184</sup> *Norway Instructions*, *supra* note 106, s. 9.

Privacy and confidentiality issues must be addressed, especially when dealing with children in facilities. For instance, the *Scotland Act*<sup>185</sup> requires that the Commissioner ensure the anonymity of children and young people, and *New Zealand Act*<sup>186</sup> requires the Commissioner and all employees to respect confidentiality requirements.

Accessibility not only involves children having physical and geographic access to the Commissioner, but that the information disseminated also be made available in child-friendly versions, including the Convention, reports and all other relevant information. For instance, when the Children's Commissioner for England publishes a report, it must also publish a version that is suitable for children.<sup>187</sup>

### **k) Complaint Resolution**

The Children's Commissioner must have the power to accept and consider complaints submitted by children or their representatives, and carry out effective investigations in areas within its jurisdiction, including the power to compel and question witnesses, and access documentary evidence. For instance, the Children's Commissioner of New Zealand has the function of investigating any decision or recommendation made or omitted in respect of any child."<sup>188</sup> The Ombudsman for Children in Norway may take up cases concerning a specific child on his own initiative, but also at the request of other people with the permission of the child.<sup>189</sup> The results of and recommendations arising from the investigation must then be reported to the child and parent, the complainant (if different from child or parent), and to the implicated authority and agency.

An important dimension of the Children's Commissioner's role is to use alternative methods in the resolution of complaints, such as mediation, between children and government authorities. Mediation or other alternative dispute resolution processes would empower the parties to advocate on their own behalf, create an atmosphere for understanding each other's situations, and obtain a voluntary, rather than an imposed, resolution to complaints. For instance, the Child and Youth Advocate for Newfoundland and Labrador may "advocate or mediate or use another dispute resolution process on behalf of a child, youth or a group of them whether or not a request or complaint is made to the advocate".<sup>190</sup>

Although the provincial Commissioners may be more accessible to children and be well positioned to focus on local problems, Canada's federal division of powers means that there will be matters that are outside of the jurisdiction of provinces and territories, such as violations of children's rights in the areas of criminal justice, immigration and refugee issues, Aboriginal affairs, recruitment into armed forces, custody and access in divorce matters, and youth employment. Children must not be left without recourse in these important areas of concern.

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<sup>185</sup> *Scotland Act*, *supra* note 130, s. 13.

<sup>186</sup> *New Zealand Act*, *supra* note 122, s. 22.

<sup>187</sup> *England Act*, *supra* note 126, s. 2(5).

<sup>188</sup> *New Zealand Act*, *supra* note 122, s. 12(1)(a).

<sup>189</sup> *Norway Act*, *supra* note 82, s. 2.

<sup>190</sup> *Child and Youth Advocate Act*, S.N.L. 2001, c. C-12.01, s. 15(1)(b). Note that New Brunswick's legislation also uses the same language. See *Child and Youth Advocate Act*, S.N.B. 2004, c. C-2.5, s. 8(1)(b).

## **l) Right of Refusal and Referral Mechanism**

While there may be concerns that requiring the Children's Commissioner to receive and review complaints will flood the system and limit the Commissioner's ability to undertake other activities that what would have a broader impact on the realization of children's rights, there is nothing from World Vision's research that justifies this view.

For instance, the Children's Ombudsman in Norway has a mandate to investigate individual complaints as well as systemic issues, in addition to such responsibilities as monitoring and general advocacy and public education. Our research has not revealed any indications that there are any concerns in this regard; this may be due, in part, to the fact that Norway has included a right of refusal to investigate. The Ombudsman for Children in Norway shall reject applications concerning conflicts between a child and its guardians, or complaints between guardians concerning parental responsibilities.<sup>191</sup> The Ombudsman may also refuse to accept the application where there are insufficient grounds to support the complaint.<sup>192</sup>

Provincial legislation also offers illustrations for possible rights of refusal. For instance, the Child and Youth Advocate for Newfoundland and Labrador may refuse to review or investigate where one year has elapsed between the complaint and the application for review; the Advocate may also refuse to investigate and provide reasons for such refusal where there are insufficient grounds for the complaint; there is insufficient personal interest by the complainant; there is an existing alternative remedy that is adequate; or if it is not in the public interest to investigate.<sup>193</sup>

Another important consideration to ensure the feasibility of the complaints process is for the Children's Commissioner to establish a referral mechanism for cases outside its mandate or capability, thus reducing its caseload. For instance, concerns relating to the application of law or handling of a case in Norway are to be referred to the Ombudsman for Public Administration. The Ombudsman for Children may also refer the complaint to another administrative body if it falls within the latter's mandate<sup>194</sup>. Similarly, the Children's Commissioner for New Zealand may refer matters that are within the scope of other statutory officers.<sup>195</sup> In that regard, the Children's Commissioner for New Zealand is also empowered to promote and assist in the establishment of accessible and effective complaints mechanisms for children in other decision-making bodies, and monitor the nature and level of complaints.<sup>196</sup>

## **m) Reporting to Parliament and the UN Committee**

The Children's Commissioner must also have the right and obligation to report directly to Parliament on its assessment of the Government's implementation of the CRC, and to comment on the status of children on various issues at the national level. By making the Commissioner's report public, it invites debate and raises public awareness, thus ensuring government accountability to children and all other citizens. All the commissioners who function independently are statutorily required to report annually

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<sup>191</sup> *Norway Instructions*, *supra* note 106, s. 3.

<sup>192</sup> *Ibid.* s. 5.

<sup>193</sup> *Child and Youth Advocate Act*, *supra* note 190, s. 18.

<sup>194</sup> *Norway Instructions*, *supra* note 106, s. 4.

<sup>195</sup> *New Zealand Act*, *supra* note 122, s. 19.

<sup>196</sup> *Ibid.* s. 12(1)(b).

to their respective Legislature or Parliament. Scotland, furthermore, must report to Parliament upon the conclusion of any investigation.<sup>197</sup>

The Children's Commissioner must also have the right to contribute independently to the reporting process under the CRC, in order to monitor the integrity of the government's reports. The Children's Commissioner could also assist the government in compiling its report, although the government must not delegate its obligations.

In summary, World Vision Canada recommends that the Government of Canada establish a national Children's Commissioner with the above elements as an independent body complimentary to the initiatives of the government in order to advance the rights of children in Canada.

## **CONCLUSION**

Canada has played a crucial role in leading the drafting of the CRC and advocating for child rights at the international level. However, the impetus for Canada's implementation of the Convention has since decreased. Child advocates have criticized Canada for not taking its obligations under the Convention seriously, and the UN Committee has repeatedly issued Concluding Observations and guidelines for implementation upon which Canada has failed to take action.

Therefore, World Vision Canada strongly recommends that the Government of Canada demonstrate that it takes the rights of children seriously, by implementing the legislative measures discussed and outlined below, which affirm and strengthen the recommendations made by the Standing Senate Committee on Human Rights.

1. Adopt enabling legislation that will bind the federal government to the CRC and strengthen the legal position of children by tabling the CRC in Parliament, accompanied by a declaration that all relevant legislation will be reviewed and amended in compliance with the treaty obligations, and a declaration that the federal government agrees to comply with the CRC;
2. Establish a permanent body that will engage in a comprehensive review of legislation and related administrative guidelines and policies to ensure compliance with the CRC on an ongoing and systematic basis. This body should be empowered to make recommendations and facilitate change in an open and transparent manner, in consultation with civil society and children;
3. Enhance the role of Parliament by tabling Canada's country reports and the UN Committee's Concluding Observations, thus providing the opportunity to assess the adequacy of government actions, whether existing laws are in compliance with the CRC, and increasing transparency and accountability to the public;
4. Enact legislation to establish a federal Children's Commissioner with a mandate that applies the Paris Principles, in order to handle issues outside the jurisdiction of the provinces and territories, to address systemic issues arising at the national level, and to coordinate and establish national standards for institutions across the country.

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<sup>197</sup> *Scotland Act*, *supra* note 130, s. 11.

The challenge of a federal system is not a valid excuse for Canada to continue to shy away from its obligations under international law. The Government of Canada has a duty to take real and effective steps towards fulfilling its obligations to respect, protect and fulfill the rights of children. While Canada may not be able to implement all the legislative measures available, it can take some important steps forward that would have a positive and lasting impact on the lives of children. The legislative experiences and challenges of South Africa, Sweden, Norway, and Argentina, and the establishment of independent national human rights institutions in Norway, Sweden, New Zealand, England, Scotland and Austria should serve as an inspiration.

## APPENDIX I: CASE STUDY- STILL A CHILD

**Patricia\*** (14) and **Jane\*** (17) arrived at Toronto's Pearson International Airport from the DR Congo in January 2001. A man, who was presumably paid to accompany them to Toronto, abandoned them at the airport once they got past immigration. He instructed the girls to go to the Information Booth at the airport, but the girls were not able to find anyone to help them. They waited at the airport for several hours, until they heard a woman speaking French, their own language, and who appeared to be Congolese as well. It turned out that the woman, **Helene**, was also a refugee who had settled in Toronto. She offered to help them, taking them to her apartment in Toronto where they spent the night. Helene called a shelter in Toronto the next day, but there was no space available. They recommended trying Matthew House in Fort Erie. Helene took them to Fort Erie where they could receive assistance, and the girls spent a total of seven months at the shelter.

Because Jane was no longer considered a minor by Ontario's standards, she was treated as the guardian of Patricia, and their cases were handled by Social Services. Social Services was not willing to cover any expenses incurred by the girls until their papers had been processed by immigration, so during that period the Fort Erie shelter absorbed the costs. Once the girls' papers were processed, Jane received financial assistance for herself and for Patricia, who was treated as her dependant. Both girls had difficulty enrolling in public school, as the school administrators were not familiar with the process for handling unaccompanied minor refugees. Matthew House has had more success enrolling children in difficult circumstances in the separate school system, but the separate schools are located far away – requiring a one-hour bus ride – so the girls chose to attend in the local public school. It took almost six weeks of negotiation.

After seven months at the shelter, the girls decided to move to Toronto. Helene and the girls had maintained contact during the seven months, and when the girls decided to move, she agreed to assist them. The girls spent one week with Helene at her apartment in Toronto, and then spent the summer with various friends. By the end of the summer, they had found their own bachelor apartment.

In March 2002, **Jean\***, the 14-year-old brother of Jane and Patricia, arrived in Ontario via the United States. He spent one night at the Fort Erie shelter, and then joined the girls in Toronto, where Jane now acts as the guardian for her two siblings. As far as Matthew House is aware, the children's parents are still alive, but no attempt has been made by Social Services to attempt to reunify the children with their family.

Jane, Patricia and Jean are all still children by international standards, but under the existing legal system in Ontario, Jane is not eligible for child protection services, and is therefore required to act as the legal guardian for Patricia and Jean. The children are all very motivated and determined to succeed in life, and are committed to continuing their studies and having successful careers. Jane aspires to be a medical doctor, and if given half a chance, is likely to achieve her goals. The gaps in federal immigration and refugee law and provincial child welfare legislation have placed these children at risk; bringing the CRC into domestic legal effect would help ensure the protection of the rights of Jane, Patricia and Jean.

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\* Please note that the names have been changed to protect the identity of the children involved.

## APPENDIX II: NO PLACE TO CALL HOME

**Zachary\*** led a normal life with his family in Ethiopia until the Ethiopian/Eritrean conflict broke out in 1998. He was expelled to Eritrea, along with his father and older brother. Zachary feared he would be conscripted to fight in the Eritrean army, and was lucky enough to escape back to Ethiopia. His mother, however, was unable to support him. At the time, Zachary (11) and his younger brother (8) were forced out on their own to find menial jobs such as shoe shining and car washing to sustain themselves.

When this existence became unbearable, Zachary and his brother made their first attempt to leave Ethiopia by stowing away on a ship. His brother made it, but Zachary didn't. He was deported back to Ethiopia where he was harassed and put in prison. After several more attempts to flee, he managed to stowaway on a Green Peace boat in September 2001. There he was treated well by the captain and crew. In November 2001, Zachary arrived in Cairo, Egypt. After an interview with the UNHCR, he was granted refugee status and recommended for resettlement in a third country on an emergency basis.

**John\*** is from Eritrea. When he was four-years-old, his parents separated and he went to live with his father. At the age of eight, his father was killed in an accident, and John went to live with friends of his family. John's problems began when soldiers came to his school, taking him and other students, and recruiting them to be soldiers in the Ethiopian/Eritrean war. John managed to escape and made his way to Djibouti.

In 2001, John attempted to stowaway on a boat heading to Europe but was discovered. He was returned to authorities in Djibouti, where he was detained, beaten and imprisoned for five days and then released. His second attempt to stowaway was successful when he sought refuge on the same Green Peace boat on which Zachary escaped. John was also interviewed by UNHCR and granted refugee status based on his fear of persecution because of his refusal to join the army, and because the Eritrean government does not recognize him as an Eritrean citizen. It was recommended that he be resettled in a third country without delay and be given the opportunity to conduct a normal life as soon as possible.

In early 2002, the cases of Zachary (then age 13) and John (then age 17) were referred to Canada as an urgent protection case, requiring a two-year sponsorship and guardianship for the boys. A Canadian visa officer in Cairo agreed that the boys could be resettled in Canada, although Canada has no policy to allow the acceptance of minors. The National Head Quarters of Citizenship and Immigration Canada notified groups working in the Ontario region of the two boys.

World Vision was asked to consider taking on this case because of our commitment to children, and our capacity to provide care and protection for refugee families.

Because Canada has no policy regarding the resettlement of refugee children, these children lived in limbo in their country of asylum for almost 10 months as World Vision negotiated numerous aspects of their resettlement including who would pay for their transportation and medical costs, the terms of their sponsorship, their refugee classification, and the role of the guardian. The boys arrived safely in Canada on November 6, 2002, and were received by the World Vision Refugee Resettlement Centre where their process of resettlement got underway.

The gaps in federal immigration and refugee law and provincial child welfare legislation have placed these children at risk; bringing the CRC into domestic legal effect would help ensure the protection of the rights of Zachary and John.

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\* Please note that the names have been changed to protect the identity of the children involved.

## **APPENDIX III: DOMESTIC LEGISLATION INCORPORATING THE CONVENTION ON THE RIGHTS OF THE CHILD**

### **South Africa**

*Constitution of the Republic of South Africa, 1996*

Accessed Online: [www.info.gov.za/documents/constitution/1996/96cons2.htm#28](http://www.info.gov.za/documents/constitution/1996/96cons2.htm#28)

*The Children's Act, No. 38 of 2005*

Accessed Online: [www.info.gov.za/gazette/acts/2005/a38-05.pdf](http://www.info.gov.za/gazette/acts/2005/a38-05.pdf)

### **Norway**

*The Constitution of the Kingdom of Norway*

Online: [ww.odin.dep.no/odin/engelsk/norway/system/032005-990424/](http://ww.odin.dep.no/odin/engelsk/norway/system/032005-990424/)

*Act Relating to the Strengthening of the Status of Human Rights in Norwegian Law (The Human Rights Act), No. 30 of 1999*

Accessed Online: [ww.ub.uio.no/ujur/ulovdata/lov-19990521-030-eng.pdf](http://ww.ub.uio.no/ujur/ulovdata/lov-19990521-030-eng.pdf)

### **Argentina**

*Constitution of the Argentine Nation, 1994*

Accessed Online: [ww.biblioteca.jus.gov.ar/Argentina-Constitution.pdf](http://ww.biblioteca.jus.gov.ar/Argentina-Constitution.pdf)

## **APPENDIX IV: LEGISLATION ESTABLISHING COMMISSIONERS FOR CHILDREN**

### **British Columbia**

*Office for Children and Youth Act*, S.B.C. 2002, c.50

\*Bill 34: *Representative for Children and Youth Act* has received Royal Assent, but has not come into force by regulation of the Lieutenant in Council. This Act authorizes the repeal of the *Office for Children and Youth Act*.

Name of Office: Child and Youth Officer

Website: [http://www.gov.bc.ca/cyo/default\\_menu\\_js.htm](http://www.gov.bc.ca/cyo/default_menu_js.htm)

### **Alberta**

*Child, Youth and Family Enhancement Act*, R.S.A. 2000, c. C-12

Name of office: Child & Youth Advocate

Website: <http://www3.gov.ab.ca/cs/ocya/index.html>

### **Saskatchewan**

*Ombudsman and Children's Advocate Act*, R.S.S. 1978, c. O-4

Name of Office: Children's Advocate

Website: <http://www.saskcao.ca>

### **Manitoba**

*Child and Family Services Act*, C.C.S.M., c. C80

Name of Office: Children's Advocate

Website: <http://www.childrensadvocate.mb.ca>

### **Ontario**

*Child and Family Services Act*, R.S.O. 1990, c. C-11

Name of Office: Office of Child and Family Service Advocacy

Website: <http://www.children.gov.on.ca/CS/en/programs/OCFSA/default.htm>

### **Quebec**

*Quebec Charter of Rights and Freedoms*, R.S.Q. , c. C-12

Name of Office: Commission des droits de la personne et des droits de la jeunesse

Website: <http://www.cdpcj.qc.ca/en/home.asp> (in English)

### **Nova Scotia**

*Ombudsman Act*, R.S.N.S. 1989, c. 327

Name of Office: Youth Services division of the Nova Scotia Office of the Ombudsman

Website: [http://www.gov.ns.ca/ombu/Child\\_Ombud/default.asp](http://www.gov.ns.ca/ombu/Child_Ombud/default.asp)

### **New Brunswick**

*Child and Youth Advocate Act*, S.N.B. 2004, c. C-2.5

Name of Office: Child and Youth Advocate

Website: n/a

### **Newfoundland**

*Child and Youth Advocate Act*, S.N.L, c. C-12.01

Name of Office: Child and Youth Advocate

Website: <http://www.childandyouthadvocate.nf.ca>

**Norway**

*Act Relating to the Ombudsman for Children of Norway, No. 5 Of 1981*

Name of Office: Ombudsman for Children

Website: <http://www.barneombudet.no/english>

**Sweden**

*The Children's Ombudsman Act, 1993:335*

Name of Office: Children's Ombudmsan

Website: <http://www.bo.se/Adfinity.aspx?pageid=85>

**New Zealand**

*Children's Commissioner Act 2003, 2003 No. 131*

Name of Office: Children's Commissioner

Website: <http://www.occ.org.nz>

**England**

*Children Act 2004, chapter 31*

Name of Office: Office of the Children's Commissioner for England

Website: <https://www.childrenscommissioner.org>

**Scotland**

*Commissioner for Children and Young People (Scotland) Act 2003*

Name of Office: Scotland's Commissioner for Children and Young People

Website: <http://www.sccyp.org.uk>

**Austria**

Established under the Minister for Family and Youth Affairs

(formerly the Federal Ministry of the Environment, Youth and the Family)

Name of Office: Federal Children's Ombudsman

Website: [www.kija.at](http://www.kija.at) (not available in English)

*Youth Welfare Act of 1989* (establish provincial ombudspersons – no English translation available)

Name of Office: Ombudsman for Children and Youth for [province]

Website: [www.kija.at](http://www.kija.at) (not available in English)

**APPENDIX V: SUMMARY OF LEGISLATION ESTABLISHING COMMISSIONERS FOR CHILDREN**

See attached chart.