



Submission to the Senate
Standing Committee on Human Rights
Concerning Canada's International Obligations
To the Rights and Freedoms of Children

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This submission was prepared with substantial input from Victoria Lam (Child Rights Researcher, World Vision Canada), with research support from the Child Rights Working Group (a student-led initiative of the University of Toronto's International Human Rights Programme). A companion paper has also been prepared, which compiles the research by these individuals regarding the legislative efforts of various States Parties to the Convention on the Rights of the Child, and lessons learned that could be applied within the Canadian context.

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.

Introduction

As a Christian child-focused humanitarian organization, World Vision is contributing to a world that no longer tolerates poverty — one where every child is able to reach his or her God-given potential. World Vision endorses the principles and articles of the UN Convention on the Rights of the Child (CRC) and its two Optional Protocols, which are consistent with World Vision's policy on the rights and protection of children, and the organization's Core Values and Mission Statement. In addition, World Vision recognises that the CRC and its Optional Protocols are complemented by additional human rights treaties that also promote the well-being of boys and girls, and World Vision acknowledges and supports the important protection provided to children by such instruments.

Thus, World Vision Canada appreciates the efforts of the Standing Senate Committee on Human Rights to undertake a study on Canada's obligations to the rights and freedoms of children, and in particular we welcome the Committee's recommendations outlined in its interim report.¹ The Committee's report clearly reveals that while Canada has taken important steps towards the realization of children's rights, there are several specific actions that the government must take in order to fulfil its duties under the Convention, such as adopting enabling legislation that will bind the federal government to the CRC, ensuring compliance of all existing and new legislation with the CRC and establishing an independent Children's Commissioner.

In response to the Committee's recommendations, World Vision Canada undertook research to assess the efforts of various other States Parties to ensure the implementation of the CRC, and to determine which of these approaches could be applied within the Canadian context. An examination of various approaches to incorporating the CRC into domestic law, and to establishing independent human rights institutions for children 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 CRC through a Parliamentary bill, and conducted sweeping review of legislation. Sweden enacted legislation to establish an independent Children's Ombudsman, and was the first State Party to link the mandate of the Ombudsman to the CRC through legislation;
- Norway incorporated the CRC through its Human Rights Act, and in 1981, it became the first country to establish an Ombudsman for Children through legislation. In 1998, the legislation was amended in order to align the mandate of the Ombudsman to the CRC;
- Argentina gave the CRC constitutional status, and adopted legislation establishing the Office of the Ombudsman for the Rights of the Child;
- New Zealand established a Children's Commissioner through legislation in 2003, following concerns over the independence of the institution, which was administered by the Department of Social Welfare since 1989. The amended legislation strengthened the independence and the role of Office of the Commissioner, and linked its broad functions and powers to the CRC;
- Austria promoted the establishment of local ombudspersons in each of the nine provinces through child welfare legislation, with the primary task of counselling children and parents, and

¹ 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*, November 2005.

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.

While each of these States Parties has faced various challenges of ensuring effective implementation, there is much that Canada can learn from their efforts. 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 and Austria, World Vision submits the following recommendations to the Standing Senate Committee on Human Rights, for inclusion in their final report:

- I. Adopt enabling legislation that will bind the federal government to the CRC;
- II. Engage in a comprehensive review of legislation and related administrative guidelines and policies on an ongoing basis to ensure compliance with the CRC;
- III. Enhance the role of Parliament to strengthen the federal government's accountability to the CRC;
- IV. Enact legislation to establish an independent human rights institution for children;
- V. Embed the CRC within Canada's foreign policy and international assistance.

I. Adopt Enabling Legislation

World Vision Canada strongly supports the Senate Committee's recommendation that the federal government adopt enabling legislation that would legally bind it to its obligations under the Convention on the Rights of the Child. Indeed, World Vision shares the view of the UN Committee on the Rights of the Child that

“States must see their role as fulfilling clear *legal obligations* to each and every child. Implementation of the human rights of children must not be seen as a charitable process, bestowing favours on children,”² and as such, “States Parties need to ensure...that the provisions of the Convention are given legal effect within their domestic legal systems.”³

There are obvious challenges to implementing the CRC within Canada's federal framework, given the division of legislative power and the need for jurisdictional coordination. The broad range of issues covered under the CRC means that the responsibilities for implementing children's rights are shared by the federal, provincial and territorial governments. Nevertheless, the Committee on the Rights of the Child has made it clear that

“Where a State delegates powers to legislate to federated regional or territorial governments, it must also require these subsidiary governments to legislate within the framework of the Convention and to ensure effective implementation.”⁴

While the federal government has not yet introduced enabling legislation for the CRC, there are several examples that demonstrate Canada's willingness and ability to develop specific legislation to ensure

² Committee on the Rights of the Child, General Comment No. 5 (2003), *General Measures of Implementation of the Convention on the Rights of the Child (arts. 4, 42 and 44, para 6.)*, CRC, 34th Session, UN Doc. CRC/GC/2003/5 at para. 11 [emphasis added] [hereinafter *General Comment No. 5*].

³ *Ibid.*, at para. 19.

⁴ *Ibid.*, at para. 20.

domestic application of other international treaties, such as: the Rome Statute of the International Criminal Court; the UN Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on their Destruction; and the Geneva Conventions for the Protection of War Victims.⁵ Moreover, World Vision's research regarding the approaches of other States Parties clearly indicates that the jurisdictional hurdles of incorporating the CRC into national legislation can be overcome.

For instance, the Government of South Africa has undertaken significant legal reform in order to legally bind the federal and provincial governments to the CRC. The new Constitution of South Africa guarantees children specific rights and freedoms provided for under the CRC under article 28 (1) of the *Bill of Rights*. It further entrenches the "best interests" principle as *paramount* in every matter concerning children under article 28(2).⁶ In addition, through the enactment of the *Children's Act*, No. 38 of 2005, the government has introduced a comprehensive and coordinated approach to the care and protection of children, including sections on parental responsibilities, protection, health, adoption, inter-country adoption, and abduction. It also incorporates the "best interests" principle and child participation.

South Africa's accomplishments have been made in the atmosphere of a federal parliamentary democracy with national and provincial governments having concurrent jurisdiction in several areas affecting children including education, health, and welfare, with provisions to address supremacy of law in the event of conflict between national and provincial legislation. The division of power in South Africa may not pose the same problems that Canada faces, due to the fact that there are concurrent jurisdictions with a provision in the event of conflict between national and provincial legislation. Nevertheless, Canada can 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.

In the case of Argentina, 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 CRC was given constitutional status under article 75(22) of the Constitution, as amended on 22 August 1994.⁷ However, as with Canada, the presence of a federal legislative framework also presents a challenge to the effective implementation of the CRC.

Argentina is divided into 21 provinces and one autonomous city. Each jurisdiction has its own legislative framework and is also 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.⁸ As of 2002, the four provinces of Mendoza, Chabut, Tierra del Fuego, Cacho and the City of Buenos Aires have

⁵ *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.

⁶ 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.

⁷ See section 75 of the *Constitution of the Argentine Nation*.

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

developed specific legislation to address the principles and provisions of the CRC. The province of Salta is undergoing policy and legislative review in order to harmonize with the CRC.⁹

Although the CRC is legally binding in Argentina, the federal government continues to face challenges with regards the full implementation of the CRC, such as cooperation amongst the provinces through legislative reform, and ongoing economic, political and social crises.¹⁰ Yet in spite of these challenges, its commitment to international treaties is obvious through their automatic integration into domestic legislation, and the constitutional status given to the CRC can be a lesson to Canada.

The Government of Norway is another example that Canada can draw upon with regards to developing enabling legislation. As is the case in Canada, Norway does not automatically incorporate international treaties into domestic law, but as far as possible, Norwegian law must be interpreted so as to be in accordance with international law.¹¹ It is noteworthy that while the Government of Norway held the view that their legislation largely met the requirements of the CRC, and in some cases gave children stronger rights than the CRC, it nevertheless assumed that such incorporation would strengthen the legal position of children, whilst also giving the strong signal that the Norwegian authorities took the CRC seriously.¹² Thus, in 2003, Norway incorporated the CRC into national law through its *Human Rights Act*, giving it precedence over any legislation if a conflict were to arise.¹³

Therefore, it is clear that while there are various challenges associated with incorporating the CRC into national law, it is indeed possible for Canada to overcome the hurdles of a federal parliamentary government. Indeed, the Government of Canada must be reminded of their duty as a State Party to the CRC to ensure

“the full implementation of the Convention throughout the territories under its jurisdiction ... [and that] there must be safeguards to ensure that decentralization or devolution does not lead to discrimination in the enjoyment of rights by children in different regions.¹⁴

Thus, 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 the rights of children. Enabling legislation would send a clear and unambiguous message that Canada takes its obligations to children seriously.

II. Engage in a comprehensive review of legislation and related guidelines and policies to ensure compliance with the CRC

⁹ See *Second Periodic Report of States: Argentina, 2002*, CRC, UN Doc. CRC/C/70/Add.10.

¹⁰ *Ibid.*, at para. 10.

¹¹ See article 110 (c) of The Constitution of the Kingdom of Norway.

¹² *Third Periodic Report of States: Norway, 2004*, CRC, UN Doc. CRC/C/129/Add.1 at para. 22.

¹³ 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. These were *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*.

¹⁴ *General Comment No. 5*, *supra* note 2 at para.41.

While the introduction of enabling legislation is a crucial step that Canada must take to ensure the CRC is legally binding on the federal government, “[i]ncorporation by itself does not avoid the need to ensure that all relevant domestic law...is brought into compliance with the CRC.”¹⁵ World Vision’s examination of the efforts of various other States Parties clearly indicated that a continuous and comprehensive review of all existing and new legislation is necessary in order to ensure that domestic legislation either complies with or exceeds the provisions of the CRC.

Indeed, Canada must conduct a review of all domestic legislation and related administrative guidelines to ensure compliance with the CRC on an article by article basis, as well as holistically. Moreover, this should be done through the establishment of a permanent body, in order to ensure the systematic and continuous review of legislation to ensure the full harmonization between Canadian laws and the CRC.

South Africa established a permanent advisory board in 1973, whose aim is the renewal and improvement of the law of South Africa on a continuous basis,¹⁶ and the South African Law Reform Commission has introduced a number of statutes affecting children. Furthermore, after ratifying the CRC, the Government of South Africa identified law reform in the area of children’s rights as a priority, and it subscribes to a broad culture of consultation and interdepartmental cooperation at all stages of the law-making process.¹⁷

In Sweden, the government appointed a parliamentary commission, entitled 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 interest” principle in the CRC with Swedish law and practice, and establishing greater clarity and a wider consensus regarding the implications of such application.¹⁸

Although Canada conducted a review of legislation prior to ratification, it did not establish a process of ongoing review whereby legislation is considered article by article and holistically against the CRC. The testimony of many witnesses to the Standing Senate Committee has clearly established that there are numerous glaring examples of how Canada’s federal laws do not conform with the standards of the CRC, such as:

- Section 43 of the *Criminal Code*,¹⁹ 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.8²⁰;
- the *Immigration and Refugee Act*²¹ 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 Involvement of Children and Armed Conflict; and
- the expanded use of adult sentences, contrary to articles 3, 37 and 40 of the CRC.

¹⁵ *Ibid.*, at para.20.

¹⁶ See *South African Law Reform Commission Act 19 of 1973*.

¹⁷ *Initial Report of State Parties: South Africa*, CRC, 1999, UN Doc. CCR/C/51/Add/2 at para 8.

¹⁸ *Second Periodic Report of States: Sweden*, 1998, CRC, UN Doc. CRC/C/65/Add.3 at para. 87.

¹⁹ R.S.C. 1985, c. C-46.

²⁰ 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. CRC/C/GC/8.

²¹ S.C. 2001, c. 27.

While we recognize that this is an onerous process, Canada is obligated to continuously review all domestic legislation in light of its obligations under the CRC,²² and “[i]n case of any conflict in legislation, predominance should always be given to the Convention, in the light of article 27 of the Vienna Convention on the Law of Treaties.”²³ Furthermore, the government should commit to continuously undertake a child impact assessment and a child impact evaluation of all laws and policies, and this “[t]his process needs to be built into government at all levels and as early as possible in the development of policy.”²⁴

III. Enhance the role of Parliament to strengthen the federal government’s accountability to the CRC

The Standing 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 in the ratification, application or implementation of international treaties, which if not directly incorporated into domestic legislation, bypass the Parliamentary process.²⁵ Yet, this process is important;

“[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.”²⁶

Sweden has the practice of tabling the Committee’s Concluding Observations, and inviting authorities and non-governmental organizations for comment.²⁷ Witnesses before the Senate Committee recommended that Canada’s country reports, the Committee’s Concluding Observations, and any government responses should be tabled in Parliament and subject to scrutiny by interested stakeholders,²⁸ thus providing the opportunity to assess the adequacy of government actions or whether existing laws are in compliance with the CRC.²⁹

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 to Parliament and the Provincial Legislatures to introduce and pass laws within their areas of jurisdiction. They alone possess this power. However this

²² *General Comment No. 5*, *supra* note 2 at para.18

²³ *Ibid.*, at para.20.

²⁴ *Ibid.*, at para.45.

²⁵ *Senate Committee*, *supra* note 1 at 35.

²⁶ *Ibid.* at 77.

²⁷ *Ibid.* at 79; Ek, *supra* note 18 at 49.

²⁸ *Senate Committee*, *supra* note 1 at 78-9.

²⁹ *Ibid.* at 74.

power has often been delegated to the executive branch - the Prime Ministers 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.”³⁰

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.³¹

IV. Enact legislation to establish an independent human rights institution for children

World Vision Canada strongly supports the Senate Committee’s recommendation that the federal government establish an independent Children’s Commissioner to monitor the implementation of the CRC and the protection of children’s rights in Canada. In addition to the recommendations made by the Senate Committee, World Vision has additional suggestions concerning the essential elements and mandate of the Children’s Commissioner, based on our research of the approaches of other States Parties to the CRC.

There has been a growing acceptance of the role that independent national human rights institutions can play as complementary to effective government structures in the advancement on children’s rights.³² For instance, Austria established ombudspersons in each of its nine provinces between 1988-1995, with the primary task 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.³³ Nevertheless, in 1991, Austria saw it necessary to establish a federal ombudsman to collaborate with the provincial ombudsperson and respond to federal issues.³⁴

Norway established the Office of the Ombudsman for Children in 1981, becoming the first country to establish an ombudsperson through legislation. Following ratification of the CRC, Norway reviewed the status and effectiveness of this Office in promoting and protecting children’s rights as enshrined in the

³⁰ 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> (accessed: 4 October 2006).

³¹ *Senate Committee, supra* note 1 at 80.

³² A study conducted by the UNICEF Innocenti Research Centre on the impact of 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 individual independent human rights institutions for children in at least 38 States. See 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) at 9.

³³ *Second Periodic Report of States: Austria, 2005*, CRC, UN Doc. CRC/C/83/Add. 8 at para. 136.

³⁴ *Initial Report of State Parties: Austria, 1997*, UN Doc. CRC/C/11/Add.14 at para. 24

Convention. An amended *Act Relating to the Ombudsman for Children*³⁵ was adopted in 1998. The roles and responsibilities of the Ombudsman under legislation are broadly based and include the investigation of complaints, monitoring the implementation of the CRC, and conducting education programs. Through its activities and involvement of children, the Ombudsman has contributed to the advancement of children's rights in Norway.

Sweden established the Office of the Children's Ombudsman in 1993 through the *Children's Ombudsman Act*.³⁶ As the Committee noted, Sweden was the first State to explicitly anchor the mandate of the national independent institution for children's rights to the CRC.³⁷ The Children's Ombudsman monitors the implementation of the CRC 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 enacted *The Children's Commissioner Act 2003*³⁸ in response to concerns over the independence of the institution it established in 1989 under the *Children, Young Persons and their Families Act 1989*.³⁹ The amended statute strengthened the independence and the role of Office of the Commissioner and linked its functions and powers to the CRC. Such powers include the power to monitor the implementation of the CRC by government organizations, to investigate complaints and establish an effective complaint mechanism, to inquire into systemic issues relating to children and the law.

Argentina adopted legislation in 1998 to establish an independent Office of Ombudsman for the Rights for the Child at the federal level. With the support of an interdisciplinary team of professionals, the Ombudsman has 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.⁴⁰

To date, Canada has not followed in these steps – there is no independent human rights institution for children at the federal level. Currently, nine provinces have an advocate for children. However, not all of them are adequately empowered to exercise their tasks in accordance with recognized international principles. 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 a national level. Furthermore, a federal institution is necessary to address violations of children's rights in the areas outside of the jurisdiction of provincial and territorial governments, such as the criminal justice system, 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.

³⁵ Act No. 5 of March 6, 1981 Relating to the Ombudsman for Children (amended July 17, 1998).

³⁶ No. 1993:335 (amended 2002:377).

³⁷ *Interim Report of the Standing Senate Committee on Human Rights*, supra note 1 at 88.

³⁸ 2003 No. 121.

³⁹ 1989 No. 24.

⁴⁰ *Initial Report of State Parties: Argentina, CRC, 1993, UN Doc. CRC/C/8/Add.2 at para. 17.*

Indeed, the Government of Canada must be reminded that the establishment of an independent national rights human rights institution for children falls within its obligations as a State Party to the CRC.⁴¹ As such, World Vision Canada submits that a Children's Commissioner must be established at the federal level with the following essential elements and mandate, in accordance with the Paris Principles:⁴²

The Office of the Children's Commissioner must:

- a) Be established through legislation in order to give independence, authority and legitimacy to its powers and duties. Furthermore, the Commissioner must have a statutory responsibility to have regard to the CRC in fulfilling its responsibilities;⁴³
- b) Be independent from the government, and have freedom to consider issues within its competence without being influenced by political agendas and sensitivities. 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;
- c) Have a multi-disciplinary staff to represent various elements of society involved in the promotion and protection of human rights, including a high level officer dedicated to the investigation and monitoring of Aboriginal children's rights due to the particular issues affecting Aboriginal children and their marginalization in Canadian society;⁴⁴
- d) Be geographically and physically accessible to all children, reaching out to children in vulnerable and disadvantaged situations. Privacy and confidentiality issues must be addressed when dealing with children in facilities. Also, the Commissioner should provide child-friendly versions of the CRC, reports and all information; and
- e) 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 provided under article 12 of the CRC. This participation must be meaningful and empowering to children, taking their views seriously and involving them in the design of complaint procedures and advocacy programs. This obligation should be statutorily mandated.

The Children's Commissioner must have broad powers in order for it to effectively monitor the implementation and protection of children's rights. These powers and responsibilities must include:

- a) Monitoring the implementation of child rights across Canada;
- b) Reporting to Parliament on an annual basis to increase the visibility of children's lives, and give Parliament an opportunity to debate the work of the Children's Commissioner and the Government's actions.
- c) Reporting to the UN Committee on the Rights of the Child, in order to monitor the integrity of the Government's reports;
- d) Conducting investigations on the Government's implementation of the CRC, and also on systemic issues and complaints affecting children's rights across Canada;

⁴¹ 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, 32nd session, UN Doc. CRC/GC/2002/2. (2002), para 1.

⁴² Principles Relating to the Status of Independent National Human Rights Institutions, UN General Assembly Resolution 48/134 (1993).

⁴³ See section 1 of Sweden's *Children's Ombudsman Act*. No. 1993:335 (amended 2002:377); section 3 of New Zealand Act's *The Children's Commissioner Act*, 2003 No. 121.

⁴⁴ *Senate Committee*, *supra* note 1 at 91-92.

- e) Accepting and considering complaints submitted by individual children or groups of individual children, or their representatives. This must involve the power to carry out effective investigations in areas within its jurisdiction, including the power to compel and question witnesses, access documentary evidence, inform complainants of their rights and the available remedies, and assist in the resolution of the complaint through mediation and conciliation;
- f) Making the articles and provisions of the CRC widely known to children and adults. In that regard, the Office of the Children's Commissioner and its mandate must be made widely known to children and adults so that the services can be accessed;
- g) Being a liaison between the provincial commissioner's offices in order to facilitate dialogue, sharing of information, investigate systemic issues, and establish national uniform standards and best practices. The federal Children's Commissioner should also consult and cooperate with international bodies and institutions in order to learn from each other's experiences and monitor the development of children's rights at the international level.

World Vision Canada recommends that Canada establish a national Children's Commissioner with the above elements as a complementary independent body to the initiatives of the Government in order to fulfill its obligations and advance the rights of children in Canada.

V. Embed the CRC within the framework of Canada's foreign policy and international assistance

Canada has long been known as a leader on children's rights within the international arena. However, the reality is that in recent years, Canada has begun to lag behind in meeting its international obligations to respect, protect and fulfill the rights of children. The time has come for Canada to assert the principle of "first call for children"⁴⁵, and make children's rights a primary consideration in Canada's foreign policy and international assistance.

We therefore suggest that the Standing Senate Committee incorporate the recommendations of the UN Committee on the Rights of the Child, with regards to the role of the CRC in Canada's international assistance:⁴⁶

- Establish the CRC as the framework for all Official Development Assistance that relates directly or indirectly to children;
- Ensure that Canada's Official Development Assistance is rights based;
- Identify on a yearly basis the amount and proportion of Official Development Assistance that is earmarked for the implementation of the CRC.

Moreover, World Vision also recommends that the CRC be firmly embedded in Canada's foreign policy. As a member of the new Human Rights Council of the UN, we call upon Canada to ensure that the Council asserts its commitment to children's rights by:

⁴⁵ Vienna Declaration and Programme of Action, General Assembly A/CONF.157/23 12 July 1993, para.45.

⁴⁶ *General Comment No. 5*, *supra* note 2 at para.61.

- Giving particular attention to four issues of grave concern: 1) violence against children, 2) the sale of children, child prostitution and child pornography, 3) children affected by armed conflict and displacement and 4) children in conflict with the law.⁴⁷
- Supporting the development of a complaints procedure for violations of the Convention on the Rights of the Child. The CRC is the only international human rights treaty with a mandatory reporting mechanism that lacks either an existing or draft complaints procedure. Such a mechanism would help address serious violations that have not been resolved through domestic remedies, and which are not being adequately addressed through the periodic reporting procedure to the Committee on the Rights of the Child.

Conclusion

Canada has been a leader in advocating for child rights at the international level, playing a significant role in the drafting of the CRC. However, over time, Canada's adherence to the standards of the CRC have waned both abroad and here at home. Child advocates have criticized Canada for not taking its obligations under the CRC seriously, and the Committee on the Rights of the Child has repeatedly issued Concluding Observations and guidelines for implementation that Canada has failed to take action upon.

World Vision Canada affirms the recommendations made by the Standing Senate Committee on Human Rights, and strongly recommends that the federal government undertake the following measures to demonstrate that Canada takes the rights of children seriously:

- i. Adopt enabling legislation by tabling the CRC in Parliament accompanied by a declaration that all relevant legislation has been 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 to signal Canada's commitment to the Convention and child rights;
- ii. 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 representative of government and non-government organizations, professions, and children, should be established to conduct such reviews on an ongoing basis;
- iii. 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 or whether existing laws are in compliance with the CRC, and increasing transparency and accountability to the public;
- iv. 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 imperative to deal with 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;

⁴⁷ Joint Statement on Child Rights to the Human Rights Council, 2nd Session, 26 September 2006; online: <http://www.crin.org/docs/Statement.doc> (accessed 16 October 2006).

- v. Embed the CRC within Canada's foreign policy and international assistance, by incorporating the recommendations of the UN Committee on the Rights of the Child on the role of the CRC in international assistance, and utilizing Canada's role in the Human Rights Council of the UN to assert its commitment to children's rights.

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 to uphold its obligations to respect, protect and fulfil 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 experiences and challenges of South Africa, Sweden, Norway, Argentina, New Zealand and Austria should serve as an inspiration.