

Implementation of the United Nations Convention on the Rights of the Child and

Commercial Sexual Exploitation of Aboriginal Children in Canada

by

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Abstract

Canada's 1991 ratification of the United Nations Convention on the Rights of the Child (CRC) means that policies to eliminate commercial sexual exploitation should be implemented equally for all children, without discrimination. However, Aboriginal peoples are disproportionately represented among Canada's population of commercially sexually exploited children and youth. They are also more likely to experience the primary risk factors for commercial sexual exploitation – poverty, exposure to violence, and involvement in the child welfare system. I conducted a policy analysis examining the implementation in Canada of the CRC Articles related to the primary predictors of commercial sexual exploitation of children, to determine whether they are being implemented differentially for Aboriginal and non-Aboriginal children. The findings revealed that although Aboriginal and non-Aboriginal children obtained identical scores on the quantitative measures, the implementation of the relevant rights standards differed substantially across the two populations, as evident in differential funding and service provision for the two groups.

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CHAPTER I

Introduction

Across the globe, more than one million children annually are forced into prostitution, trafficked and sold for sexual purposes, or used in child pornography (United Nations General Assembly, 1996). Most experts believe this to be an underestimate (Barnitz, 2001; Stewart & Gajic-Veljanoski, 2005). In North America alone, about 300,000 children and youth are involved in the sex trade (Caledon Institute of Social Policy, 2001), some as young as 10 (Kingsley & Mark, 2000). In Winnipeg specifically, the average age of sexually exploited children is 13.5 years and 70 to 80% of adults currently involved in the sex trade entered it before age 18 (Seshia, 2005).

Among the population of commercially sexually exploited children in Canada, Aboriginal¹ children and youth are disproportionately represented (Kingsley & Mark, 2000; ECPAT International, 2008). In some communities, Aboriginal children and youth constitute more than 90% of the visible sex trade in places where the Aboriginal population is less than 10% (Kingsley & Mark, 2000).

This situation is surprising, given that Canada ratified the United Nations (UN) Convention on the Rights of the Child (CRC) in 1991, and its Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography in 2005. By ratifying these two documents, Canada committed itself to ending the commercial sexual exploitation of children without discrimination. The fact that

¹ For the purposes of this thesis, the term Aboriginal will be used to refer to Inuit, Métis, and First Nations.

Aboriginal children remain at such heightened risk suggests that Canada's efforts to end this form of violence against children may not be carried out equally across populations. One of the fundamental principles of human rights treaties is that they are to be implemented equally across all people, regardless of age, culture, religion, race or ethnicity. The vast inequality in risk for commercial sexual exploitation between Aboriginal and non-Aboriginal children in Canada raises questions about the degree to which the CRC and its Optional Protocol are being implemented equitably across those groups. The purpose of this study was to investigate and address this question.

In order to ground myself in this thesis, I will begin by giving a brief explanation of why this particular topic is of interest to me. I am originally from Zambia, a former British colony in the southern part of Africa that was exploited for its natural resources and its inhabitants, many thousands of whom were abducted into the slave trade. Much like the Hudson's Bay Company in Canada, the British South Africa Company took Zambian chiefs' lands and minerals in return for "aid". Zambia continues to struggle today with the long term effects of colonization.

One of those effects is an ever-increasing number of sexually exploited children, largely due to the neglect, poverty and lack of protection faced by AIDS orphans. Zambia is not alone in dealing with this problem. Commercial sexual exploitation of children and youth is a growing global industry (Pinheiro, 2006). It flourishes most where children and youth struggle to survive, and where legal and policy frameworks are inadequate to protect them.

According to the United Nations Secretary-General's Study on Violence against Children (Pinheiro, 2006), ending child sexual exploitation requires governments to "harmonize" national legislation with the CRC (p.269). Increasing child protection depends to a large extent on applying human rights standards to strengthen legal and policy

frameworks. My personal goal is to work with civil society organizations to strengthen laws and policies through the application of human rights standards.

I chose to focus my research on Canada because although it is a highly developed country, the well-being of its Aboriginal children is comparable to that found in some developing countries (UNICEF, 2009). Therefore, Canada provides a unique opportunity to examine child exploitation in light of its colonial past, which led to the differential application of laws and policies to the Aboriginal and non-Aboriginal populations. A careful examination of the application of child rights standards in the development of the legal and policy frameworks governing the well-being of these two populations illuminated the degree to which discriminatory practices affect the protection of Canada's children from exploitation.

History of Aboriginal People in Canada

Canada's colonial history is a fundamental factor affecting Aboriginal children's risk of being sexually exploited (Sethi, 2007). Colonization involved a massive attempt to assimilate Aboriginal peoples who had thrived on this land for thousands of years into the cultures of the French and the English settlers. Beginning in the 1600s, laws were enacted that gradually came to control every aspect of their lives, culminating in the Indian Act which is still in effect today. The aim of these laws was to eradicate Aboriginal cultures through destroying the peoples' connections to their ancestral lands, their languages, and their traditions (Kingsley & Mark, 2000).

The key instrument of assimilation was the Indian Residential Schools, established in 1860 and operated by the government and Christian churches (Blackstock et al., 2004), which all Aboriginal children were required to attend by law. Sanctioned by the Indian Act, children were removed from their parents, often by force, and placed in these residential schools in distant places (Blackstock et al., 2004). They were expected to attend these schools for 10

months of the year, from the age of 3 to the age of 16 (Le France & Collins, 2003). Many were not allowed any contact with their families during those years, and many died in these institutions. The schools forbade children to speak their languages, maintain their indigenous names, wear their traditional clothing, keep their highly symbolic braids, or practice their cultural traditions (Blackstock et al., 2004; National children's Alliance, 2004). Vast numbers of these children experienced repeated sexual and physical abuse by their "caretakers" (missionaries, nuns and priests), isolation, neglect and servitude (Blackstock et al., 2004). These experiences of traumatic separation, violence and degradation left emotional and spiritual destruction in their wake, as well as devastated families, communities, and cultural identities.

When these children were eventually liberated from the Residential Schools as adolescents; they were expected to return to their families and communities and function as if nothing had happened to them. But their own parents had become strangers to them (LeFrance & Collins, 2003). The impacts of the destruction of their family attachments, the punishments they had endured for expressing their cultural identities, the physical and emotional starvation they experienced, and the relentless humiliations they had suffered were never addressed by the government. When they became parents themselves, they carried all of their physically and emotionally tortuous experiences, hatreds, fears, and scars with them. The result was generations of parents with unresolved trauma who had no experience of loving, nurturing parenting; no experience of emotional bonding within a family. Alcoholism, substance abuse, violence and neglect replaced the loving kinship relationships that had existed in Aboriginal societies prior to colonization (Kingsley & Mark, 2000; Le France & Collins, 2003). The dysfunctional and violent behaviours modelled in the institutions now were being transmitted to subsequent generations of children.

Wesley-Esquimaux & Smolewski (2004) have developed a model of historic traumatic transmission (HTT) to account for the social problems that manifested among First Nations, Métis and Inuit people as result of the Residential Schools and other colonial practices. They define historic trauma as a cluster of traumatic events, hidden collective memories, or a collective non-remembering of trauma passed from one generation to another. The HTT model suggests that there is no single historical trauma response: rather, there are different social disorders with respective clusters of symptoms. Those social disorders are repetitive maladaptive social patterns, such as post-traumatic stress disorder, that occur in a group of people and are associated with a significantly increased risk of suffering. A symptom is explained as a manifestation of maladaptive social patterns such as suicide, domestic violence, sexual abuse, and interpersonal maladjustment. Such symptoms are not caused by the trauma itself. Rather, historic trauma disrupts adaptive social and cultural patterns changing them into maladaptive ones that manifest themselves in symptoms. In short, historic trauma causes deep breakdown in social functioning that may last for many years, decades or generations. Symptoms that parents exhibit (family violence, sexual abuse) act as a trauma and disrupt social adjustments in their children. In turn, these children internalize the symptoms and, much like a “trauma virus,” fall ill to social disorders (Wesley-Esquimaux & Smolewski, 2004). In the next generation, the process perpetuates itself and the trauma, a relentless causal agent, continues.

The government’s response was another mass removal of Aboriginal children from their homes during the 1960s and 1970s, often without the knowledge or consent of their families or bands – a period known as “The Sixties Scoop” (Blackstock et al., 2004). Of these children, 70% were adopted into white middle-class families across Canada and the United States (Bagley, Young & Scully, 1993). Siblings were separated, families were destroyed, children were traumatized, and further generations of children’s Aboriginal

identities were confused and eroded. These children lost their Aboriginal names through legal adoptions, their files were sealed, and they became permanently estranged from their Aboriginal roots (Alston-O'Connor, 2010). The child welfare system had replaced the residential schools as the agent of assimilation (Alston-O'Connor, 2010).

Of the adoptions carried out through the Sixties Scoop, 85% to 95% broke down, often during the adoptees' adolescence, when the development of a strong identity is a primary developmental task (Sinclair, 2007). With no known homes to return to, many of these children became runaways. Socially isolated, traumatized and mistrustful, many found support on the streets, quickly exposing them to the risk of sexual exploitation (Alston-O'Connor, 2010; Sethy, 2007). The results of the Sixties Scoop have been high rates of homelessness, substance abuse, incarceration and suicide among adoptees (Sinclair, 2007). Once again, Aboriginal children had been deprived of the cultural roots, kinship ties, secure environments, strong identities, and parenting models that are vital to their becoming healthy adults and nurturing parents. Today, there are more Aboriginal children in the care of the State than there were at the height of the residential school era (Blackstock, 2003). The cumulative effects of colonization have led successive generations of children into poverty, exposed them to family violence, and placed them into the care of the child welfare system – three conditions that substantially heighten their risk of commercial sexual exploitation.

Literature Review

In 2004, the Royal Canadian Mounted Police estimated that about 800 people were trafficked into Canada each year (U.S Department of State, 2006). Many were lured by predators including, in some cases, their parents and older siblings and, of these, many are trafficked across provincial and national borders, isolating them from their family and friends and making them extremely vulnerable to physical violence, forced drug use and threats of harm to them or their families (Estes & Weiner, 2001). Others were living on the street after

running away from violent homes (Seshia, 2005), engaging in sex with strangers to survive or to support drug addictions (Saari, 2008). According to Statistics Canada (n.d), among the number of people involved in street prostitution in Canada, between 10 and 15% were under the age of 18 (cited in ECPAT International, 2006). The impact of this experience on children is profound.

Impact of Commercial Sexual Exploitation on Children

Sexually exploited children suffer many forms of abuse at the hands of their procurers (“pimps”) and those who pay to have sex with them, and often experience physical, emotional and psychological trauma (Austin, 2003). Many become victims of severe physical violence, including being thrown out of moving vehicles, rape, torture and murder (Barnitz, 2001; Government of Manitoba, 2006). They often suffer malnutrition, contract HIV/AIDS and other sexually transmitted infections, develop drug dependencies, and are at heightened risk of drug overdoses, self-harming behavior and suicide attempts (Austin, 2003; Brilleslijper-kater & Baartman, 2000; ECPAT International, 2008; Flowers, 2001; Kingsley & Mark, 2000; Roby, 2005). They are very likely to be marginalized and ostracized by the larger society, which keeps them trapped in the sex trade. Many develop depression and anxiety, low self-esteem, social withdrawal, hopelessness and symptoms of post-traumatic stress disorder (Roby, 2005; Sethi, 2007). Their shame furthers their social isolation (Hay, 2004).

Although some children and youth may wish to leave the sex trade, they rarely do so. To keep them in the sex trade, exploiters manipulate these children psychologically and use force to control them (Rafferty, 2008). Exploiters maintain control over their victims through forced drug use, frequent beatings and keeping them in a constant state of fear (Albanese, 2007; Caledon Institute of Social Policy, 2001; Manitoba Government, 2006; Rafferty, 2008). The physical abuse that victims face may result in severe injuries or even death as they try to

escape or challenge their abuse (ECPAT International, 2008). Furthermore, their educational opportunities are taken from them, making it very difficult for them to change their lives or improve their economic circumstances (Rafferty, 2008). These impacts on the children filter through the entire society, affecting families and communities and eroding common values and human rights (Barnitz, 2001; ECPAT International 2008).

Risk Factors for Commercial Sexual Exploitation among Children

The factors underlying children's vulnerability to commercial sexual exploitation are embedded in economic, social and cultural structures and these factors are interlinked (Henschel, 2003). These children's lives tend to be characterized by three primary factors: poverty, family violence and involvement with the child welfare system.

Poverty. Poverty is considered one of the primary factors increasing children's vulnerability to sexual exploitation (Seshia, 2005). Estes and Weiner (2001) suggest that poverty is a particular risk factor for children living in dysfunctional families. The low levels of family literacy often associated with poverty further limit children's educational and employment opportunities, amplifying risk (Hartijen & Priyadarsini, 2012).

Exposure to family violence. Physical, sexual and emotional violence in the home is a major risk factor for children and youth entering the sex trade (Estes & Weiner, 2001; Seshia, 2005). Family violence can lead children to run away from home and live on the streets or in unsupervised arrangements (Tyler, Hoyt, & Whitbeck, 2000; Sikka, 2009). In these situations, they are at risk for engaging in survival sex and are vulnerable to recruitment by their procurers (Minnesota Indian Women's Resource Centre [MIWRC], 2009; Roby, 2005; Wisdom & Kuhns, 1996). Nadon, Koverola & Schluderman (1998) found that of 45 female adolescents engaged in the sex trade, 48% reported having been physically abused and 68% reported having been sexually abused in their homes. In a Canadian study of 113 male and 74 female runaways, 74% of the males and 90% of the females had been physically

abused at least once, most commonly by a biological parent. The participants stated that the abuse preceded running away from home (Janus, Archambault, Brown, & Welsh, 1995). Simons and Whitbeck (1991) tested models of the direct and indirect impacts of early sexual abuse on involvement in the sex trade among a sample of adolescent runaways and a sample of adult homeless women. For every unit increase on the sexual abuse scale, the odds of becoming involved in the sex trade increased by a factor of 1.23. Sexual abuse by trusted adults, such as family members, can contribute to a normalizing of the abuse, heightening a child's risk of sexual exploitation.

Involvement in the child welfare system. A 2006 Canadian survey of sexually exploited youth revealed that 44% had been in the care of the child welfare system (Saewyc et al., 2008). The higher likelihood of these children being in care is primarily related to their higher likelihood of experiencing neglect, as well as family violence and parental substance abuse (Trocmé et al., 2010). The odds of being placed into care increase when children experience violence in their homes. Once in care, they often lack needed emotional supports (Sikka, 2009) and may run away, ending up on the streets where they are vulnerable to recruitment into the sex trade.

Commercial Sexual Exploitation of Children in Canada

It is impossible to know the actual number of commercially sexually exploited children in Canada due to a lack of national data. However, estimates have been drawn from studies of homeless youth involved in survival sex and in the sex trade. Extrapolating from Toronto data, Williams (2005) estimated that across Canada 11,250 children were involved in survival sex and 22,500 were being exploited through the sex trade in 2002. The over-representation of Aboriginal children and youth in commercial sexual exploitation has been well documented across Canada (Kingsley & Mark, 2000; Saewyc et al., 2008). A youth health survey conducted in British Columbia in 2000 found that of 523 street youth aged 12

to 19, 29% were sexually exploited, of which 34% were Aboriginal (Saewyc et al., 2008). A similar survey conducted in British Columbia in 2006 of 762 street youth aged 12 to 18 found that 30% were sexually exploited, of which 57% were Aboriginal. Therefore, one-third to more than one-half of sexually exploited youth in these surveys identified as Aboriginal (Saewyc et al., 2008), although Aboriginal children made up only 8% of the population of children in British Columbia during that period (Statistics Canada, 2006). A study of young people in the Calgary sex trade (McIntyre, 2002) found that 26% of the sample were of Aboriginal heritage (24% of females and 40% of males had Aboriginal backgrounds).

The consistency of findings showing that Aboriginal children are over-represented in commercial sexual exploitation suggests that Aboriginal children are more vulnerable to experiencing its risk factors. It has been suggested by child advocates that Aboriginal children, particularly those on reserve, are exposed to poverty and violence and are more likely to be involved in the child welfare system because the services designed to meet their basic needs are not adequate and in some cases are non-existent. The First Nations Child and Family Caring Society of Canada [FNCFCFS] (2009) cites discrimination and disadvantage as being among the key underlying factors that amplify their vulnerability.

Poverty among Aboriginal Children in Canada

The higher levels of poverty experienced by Aboriginal children have been well-documented. Campaign 2000 (2008) found that one in four children in Aboriginal communities lives in poverty compared with an average of one in nine other Canadian children (cited in Canadian UNICEF Committee, 2009). In 2006, 57% of First Nations children living in census metropolitan areas, 45% of Inuit children, and 42% of Métis children were living in low-income families, compared to 21% of non-Aboriginal children (Statistics Canada, 2006).

Anderson (2003) found that the proportion of Aboriginal children living in poverty (52%) was higher than that of other marginalized groups, such as children with disabilities (23%) and children of visible minority groups (43%). Aboriginal children living on reserves are among the poorest in the country, experiencing conditions equivalent to those typically found in developing countries (Bennett & Blackstock, 2002). In Manitoba, the proportions of Aboriginal and non-Aboriginal people with incomes falling below Statistics Canada's after-tax low-income cut-off are 28.6% and 10.2%, respectively (Noël & Larocque, 2009). The poverty found in many rural Aboriginal communities may result in children and youth moving from these communities to larger cities in the hope of getting into school or securing a job (Government of Manitoba, 2006). Sometimes children are forced to move from their communities in order for them to advance their education beyond grade 8. Such a move may increase their risk of exposure to sexual exploitation because they find themselves alone and without the protection of their families and friends.

In addition to having the highest poverty rates, Aboriginal children are the most marginalized and disadvantaged group in Canada (Native Women's Association of Canada, [NWAC], 2006). Many are being raised by single mothers or other female relatives with lower incomes and higher rates of unemployment than Aboriginal men and non-Aboriginal women. In fact, 18% of Aboriginal women aged 15 and older headed families in 2006, compared to 8% of non-Aboriginal women (O'Donnell & Wallace, 2011). Single-parent households headed by Aboriginal parents are often more than twice as large as families headed by non-Aboriginal parents (O'Donnell & Wallace, 2011). Together, these findings suggest that Aboriginal children are indeed more vulnerable than non-Aboriginal children to experiencing poverty.

Exposure to family violence among Aboriginal children in Canada

Aboriginal children also are more likely than non-Aboriginal children to be exposed to family violence, the second key risk factor for commercial sexual exploitation. Aboriginal families experience higher rates of violence than other Canadian families, largely as a legacy of Canada's residential school policies, which began a cascade of intergenerational transmission of physical and sexual abuse (Hunt, 2008). Consequently, many Aboriginal communities are struggling to break the cycle of violence (Justice Institute of British Columbia, 2006). Aboriginal women are three times more likely than non-Aboriginal women to experience violence, and five times more likely to die as a result (NWAC, 2006). Health Canada (2001) has estimated that 75% of Aboriginal women and 40% of Aboriginal children have experienced violence (cited in Hunt, 2008).

The youth participants of a national Aboriginal Consultation Project described the high levels of physical, sexual and/or emotional abuse they experience in their homes at the hands of parents, relatives, caregivers and neighbors, which led them to leave home or to be placed in foster homes (Kingsley & Mark, 2000). If placed in care, Aboriginal children remain at high risk for exposure to violence; 40% of First Nations children living on-reserve and 30% of those living off-reserve have been exposed to violence while in care; 21% of those living on-reserve and 10% of those living off-reserve have themselves been physically abused in care (Assembly of First Nations, n.d). In many circumstances, the abuse becomes normalized – or victims may fear being blamed and ostracized if they disclose the violence (Justice Institute of British Columbia, 2006). In these situations, they become vulnerable to exploitation.

Available data continue to demonstrate that the situation for Aboriginal children is not improving, as demonstrated by the findings of all three cycles of the Canadian Incidence Study of Reported Child Abuse and Neglect (CIS). The 1998 CIS revealed that 58% of

substantiated cases involved Aboriginal children living off-reserve, while 41% of substantiated cases involved non-Aboriginal children (Trocmé et al., 2001). The 2003 CIS found that cases of maltreatment involving Aboriginal children were 2.5 times as likely to be substantiated as those involving non-Aboriginal children (Trocmé et al., 2005). The 2008 CIS revealed that 22% of substantiated cases of maltreatment involved Aboriginal children – a rate of 49.69 per 1000 children. This rate is four times that found among non-Aboriginal child investigations (Trocmé et al., 2010). A similar pattern was found in the 1998 CIS and the 2003 CIS.

Aboriginal Children's Involvement in the Canadian Child Welfare System

Given the higher rates of poverty and exposure to family violence experienced by Aboriginal children, it is not surprising that they also are more likely to be placed in child welfare care (Blackstock, Trocmé & Bennett, 2004). Compared with non-Aboriginal children, Aboriginal children enter child welfare care at a much higher rate (National Children's Alliance, 2005). As of May 2005, one in ten Status Indian children were in child welfare care, compared with one in two hundred non-Aboriginal children (FNCFCS, 2004/2005). Off-reserve as well, Aboriginal children are significantly over-represented in the child welfare system (National Children's Alliance, 2005). The number of Aboriginal children taken out of their homes and placed in care continues to increase (Trocmé, Knoke & Blackstock, 2004). In 1998, while Aboriginal children composed only 5% of the population, 17% of children reported to child welfare authorities, 22% of the victims in substantiated reports of maltreatment, and 25% of children admitted to care were Aboriginal (Blackstock, Trocmé & Bennett, 2004).

Neglect is the primary reason for Aboriginal children being placed in out-of-home care (Trocmé et al., 2010). Neglect is driven by poverty, insufficient housing and substance misuse (National Children's Alliance, 2005). While in care, children continue to be at-risk

for sexual abuse, amplifying their vulnerability to sexual exploitation. Some children involved in the sex trade actually live in foster homes while working on the streets, including many Aboriginal children (Saari, 2008). Trocmé, Knoke, and Blackstock (2004) have suggested that child welfare workers' decisions to substantiate maltreatment reports and place Aboriginal children into out-of-home care are driven by the multitude of risk factors that the children experience.

Summary

There is considerable evidence that Aboriginal children face the primary risk factors for commercial sexual exploitation at a much higher rate than non-Aboriginal children. They are much more likely than non-Aboriginal children to live in poverty, to be exposed to family violence, and to be placed into child welfare care. What accounts for this difference in risk levels? Is it solely a matter of insufficient education (Wilson & Macdonald, 2010), broken family attachments (Hay, 2008; Hunt, 2008; NWAC, 2006), or cultural perpetuation of poverty (Canadian UNICEF Committee, 2009; Noël & Larocque, 2009), or is it an issue of systemic violations of human rights? In the following section, I set out a foundation for investigating this issue from a human rights perspective.

CHAPTER 2

Commercial Sexual Exploitation of Children as a Human Rights Issue

Increasingly, children's engagement in the commercial sex trade is viewed as a fundamental violation of their rights. At the First World Congress against Commercial Sexual Exploitation, held in Stockholm in 1996, this form of violence was identified as a rights violation and the CRC was recognized as a guiding instrument for the development of strategies to end it (United Nations General Assembly, 1998). Treating a child as a sexual and commercial object "constitutes a form of coercion and violence against children, and amounts to forced labor and a contemporary form of slavery" (First World Congress, 1996, p. 1). In Canada, however, the sexual exploitation of children tends to be regarded as a prostitution or sex work issue (Sethi, 2007) and is addressed through piecemeal solutions which favor analyzing one issue at a time, rather than alleviating the root causes (poverty, family violence and involvement in child welfare care) (Manitoba Family Services and Housing, 2008).

Many observers now argue that strategies to end the commercial sexual exploitation of children must be embedded in a human rights approach and involve uniform development and implementation of policies and programs that address the factors that increase children's vulnerability to sexual exploitation at all levels (Joffres et al., 2008). To do so is challenging, however, as the notion of children as rights-bearers has emerged very recently in our history. It was only in 1989 that the United Nations General Assembly adopted the CRC, the first legally binding treaty to specifically address the rights of children. The CRC represents a paradigm shift in global perceptions of children and their personhood. With this evolution, children emerged from property status to be considered as persons with corresponding human rights (Cohen & Naimark, 1991).

Although the CRC is built on varied legal systems and cultural traditions, it has been universally agreed-upon. It provides a set of non-negotiable standards and obligates the governments that ratify it to protect the basic human rights to which children everywhere are entitled, setting minimum standards that governments must meet in providing healthcare, education, protection, and legal and social services to children in their countries (United Nations Association in Canada, [UNAC], 2001). The CRC recognizes children's particular vulnerabilities; while families have the primary responsibility to care for and protect children, this must be reinforced by legal protection (Sneddon, 2003).

Although almost all of the countries in the world have ratified the CRC, thereby committing to meeting its standards, in reality many do not implement it. Children around the world continue to suffer from poverty, homelessness, abuse, neglect, preventable diseases, and unequal access to education and justice systems that do not recognize their special needs (UNAC, 2001). The CRC makes it clear that a basic quality of life should be the right of all children rather than a privilege enjoyed by a few, yet children of minority groups are often disadvantaged. In Canada, a "Canada Fit for Children" document was adopted in 2004 (Government of Canada, 2004) following the government's ratification of the CRC. It was intended to ensure that all children's rights were upheld without discrimination:

We affirm our obligation to promote and protect the human rights of all children. Canada is a State Party to the Convention on the Rights of the Child, the most universally embraced human rights treaty in history. In Canada the Convention on the Rights of the Child has become the main instrument of reference, the essential basis for the achievement of children's rights. Canada's commitments to children are consistent with the four guiding principles of the Convention, the best interest of the child, survival

and development, participation and non-discrimination (Government of Canada, 2004, pp. 17).

But are the CRC standards being implemented without discrimination? Have policies been developed to reduce the risk for commercial sexual exploitation equally among Aboriginal and non-Aboriginal children? Have all the provinces implemented the CRC standards and provisions? The CRC is based on two fundamental principles that are particularly relevant to these issues: 1) the best interests principle, and 2) the non-discrimination principle.

The Best Interests Principle

The overarching principle of the CRC, set out in Article 3, is that all decisions should be made in the children's best interests. Individuals making such decisions should always consider what is best for children and how children will be affected by those decisions. Therefore, policies should be formulated on the basis of the best interest of the child by all levels of government, and the outcomes for children should be monitored and reported publicly (Canadian Coalition for the Rights of Children, 2009).

The Non-discrimination Principle

All articles of the CRC are to be applied to all children without discrimination on the basis of ethnicity or any other characteristic. Article 2 states that no child should be treated unfairly on any basis, irrespective of the child's race, color, sex, language, religion, abilities or what their parents or legal guardians do (United Nations General Assembly, 1989; UNICEF, 2006;). Therefore, all children in Canada should be protected from violence, and laws and policies should be established in the best interests of all children. With regard to commercial sexual exploitation, the risk factors for this form of violence should be addressed with equal vigour for Aboriginal and non-Aboriginal children.

The CRC and Risk Factors for Commercial Sexual Exploitation

The CRC sets out clear obligations of governments to reduce risks to children's well-being. Three of them are particularly relevant to reducing children's exposure to the primary risk factors for commercial sexual exploitation: 1) the right to an adequate standard of living (Article 27); 2) the right to protection from violence (Articles 19, 34 and 35); and 3) the right to parental care or high-quality alternative care (Articles 18, 20 and 25).

The right to an adequate standard of living. The CRC urges States Parties to ensure that all children have a right to a standard of living adequate to meet their physical and mental needs. Governments should help families and guardians who cannot afford to provide this, particularly with regard to food, clothing and housing (UNICEF, 2006). According to Article 27, it is the responsibility of parents and guardians to secure, within their abilities and financial capacities, the conditions necessary for the child's development. States Parties shall take all necessary measures to assist parents and others responsible for the child to implement this right and shall provide material assistance and support programmes where needed (United Nations General Assembly, 1989).

The right to protection from violence. The CRC requires all children to be protected from all forms of violence and exploitation. According to Article 19, Governments should ensure that children are properly cared for and protected from violence, abuse and neglect by their parents or anyone else who looks after them (UNICEF, 2006). "Appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect, while in the care of parent(s), legal guardian(s) or any person who has care of the child" must be in place. Protective measures should include "effective procedures for the establishment of social programmes to provide necessary support for the child and for those who have care of the child, as well as for other forms of prevention and for identification, reporting, referral, investigation, treatment and

follow-up of instances of child maltreatment” and, as appropriate, for judicial involvement (United Nations General Assembly, 1989).

Articles 34 and 35 state that governments should protect all children from all forms of sexual exploitation and abuse. All necessary measures should be taken to ensure that children are not abducted, sold or trafficked (UNICEF, 2006). “States parties shall in particular take all appropriate national, bilateral and multilateral measures to prevent: (a) the inducement or coercion of a child to engage in any unlawful sexual activity; (b) the exploitative use of children in prostitution or other unlawful sexual practices; and (c) the exploitative use of children in pornographic performances and materials” (United Nations General Assembly, 1989).

Therefore, the CRC should be the point of reference in all legislation and policies enacted to protect children, and risk factors for commercial sexual exploitation should be explicitly addressed.

The right to parental care or high-quality alternative care. The CRC requires that governments respect the responsibility of parents to provide appropriate guidance to their children. Children who cannot be looked after by their own families have a right to special care and must be looked after properly. As well, where children are deprived of family environments, the living arrangements must be monitored regularly to ensure that they are the most appropriate (UNICEF, 2006). This is outlined in Articles 18, 20 and 25. Article 18 states that while governments must respect the responsibility of parents to provide guidance to their children, they should provide support services - especially if both parents work outside the home (UNICEF, 2006).

According to Article 20 children who cannot be looked after by their own family have a right to special care. Such children must be looked after by people who respect their ethnic group, religion, culture and language (UNICEF, 2006).

Article 25 states that the living arrangements for children who have been placed by competent authorities must be reviewed regularly to ensure that they are the most appropriate. Their care and treatment should always be based on the best interests principle (UNICEF, 2006).

Implementation of Human Rights Standards

A government's ratification of the CRC indicates its agreement to abide by its principles and to meet its standards. Ratifying countries are also obligated to monitor and evaluate whether their laws and policies are consistent with the CRC and whether they are leading to improvements in children's well-being (Williams, 2005). To have its desired impact, the CRC must be incorporated into domestic legislation (Williams, 2005); otherwise it will not be translated into "living benefits" for children and will remain "paper concepts" (p.4).

Therefore, it is governments, rather than individuals, families and communities that are called upon to shoulder the responsibility of addressing commercial sexual exploitation of children. Having ratified the CRC in 1991, Canada is expected to fulfill this obligation (Alexander, Meuwese & Wolthuis, 2000) and to implement child rights standards fully and without discrimination. Implementing the CRC standards requires States Parties to develop programs that improve children's wellbeing in all areas of their lives.

If implementation of the CRC is effective, then in places where the CRC is more fully implemented, commercial sexual exploitation of children should be less prevalent. Evidence from Sweden suggests that this may indeed be the case. Sweden is one of few countries that have almost fully implemented the CRC in law and policy. For example, the Swedish government appoints a Children's Ombudsman every six years whose role is to promote the rights of children and hold the government accountable for implementing the CRC. This office serves as a national coordinating body meant to achieve uniform realization

of children's rights and to facilitate monitoring of programs' implementation, achievements and gaps (Williams, 2005). In 1999, the Swedish Parliament voted unanimously to subject every new bill to a child impact assessment to ensure that legislative reforms do not harm or disadvantage children. The UN Committee on the Rights of the Child has acknowledged Sweden's progress toward full implementation of the CRC (United Nations Committee on the Rights of the Child, 2009).

In Sweden, prostitution is regarded as a form of male sexual violence against women and girls (Ekberg, 2004) and efforts to eradicate it have been going on for several years at both national and international levels. The introduction, in January of 1999, of a law that prohibits the purchase of sexual services was followed by a reduction in the number of women involved in street prostitution by 30% to 50% over a period of 5 years. Sweden has been identified as a tough environment in which to carry out the sex trade business, a reputation that has discouraged dealers in human trafficking to conduct their business there (Ministry of Health and Social Affairs, Sweden, 2001).

In Sweden, poverty, exposure to family violence and involvement with child welfare agencies are addressed through family policies which focus on protecting children, redistributing income to ensure an adequate standard of living for all, compensating for the economic costs of rearing children and giving people the economic resources to raise children. Therefore, the Swedish government ensures that the three primary risk factors for commercial sexual exploitation of children are kept in check through enhancing support to parents, improving psychological wellbeing of children and reducing violence against them (Swedish Government's Human Rights Website, 2008). As a result of Sweden's efforts, child sexual exploitation - particularly street prostitution - is rare there (National Board of Health and Welfare, 2004).

Addressing commercial sexual exploitation as a human rights issue, and fully implementing the CRC, should substantially reduce this form of violence against children. The substantial over-representation of Canadian Aboriginal children in the commercial sex trade suggests that the CRC is not being implemented to the same extent for Aboriginal and non-Aboriginal children, which would constitute a violation of the CRC's best interests and non-discrimination principles. This study investigated whether this was the case.

Purpose of the Study

The purpose of this study was to assess the degree to which Canada has equitably implemented the CRC to reduce children's risk for commercial sexual exploitation. Through a policy analysis, I examined the implementation of the Articles of the CRC that relate specifically to the three primary predictors of commercial sexual exploitation of children - poverty, exposure to family violence, and involvement in the child welfare system – to determine whether these Articles are being implemented differentially for Aboriginal and non-Aboriginal children.

Research Question

It has been well documented that Aboriginal children are disproportionately represented in the commercial sex trade in Canada. It is also known that Aboriginal children and youth are more likely to experience the primary risk factors for commercial sexual exploitation. The research question addressed in the present study was: Do Canadian laws and policies implement the following CRC standards to a lesser extent for Aboriginal than non-Aboriginal children? 1) the right to an adequate standard of living; 2) the right to protection from violence; 3) the right to parental or high quality alternative care.

CHAPTER 3

Methodology

In order to examine whether the CRC is being implemented differentially for Aboriginal and non-Aboriginal children, I conducted a policy analysis focused on three policy areas: economic security, protection from family violence, and child welfare. This analysis assessed the extent to which Canada is implementing those Articles that relate specifically to the three primary predictors of commercial sexual exploitation of children: poverty, exposure to family violence, and involvement in the child welfare system.

Measures

The measures were drawn from the *Implementation Handbook for the Convention on the Rights of the Child* (Hodgkin & Newell, 2007). This document provides checklists to guide assessments of the implementation of each Article of the CRC. The *Implementation Handbook for the Convention on the Rights of the Child* has become a tool that governments, UNICEF and other UN agencies, non-governmental organizations, human rights institutions and academics have drawn upon for guidance on the implementation of the CRC (Hodgkin & Newell, 2007). It provides a checklist for each CRC Article that operationalizes “implementation” of that Article. Each checklist sets out criteria by which one can assess the degree to which the relevant Article is being implemented in a particular country.

In order to determine whether the criteria are met, I examined official government documents that describe current Canadian policies, as well as non-governmental documents that can provide broader information on those policies. I looked for any evidence that addressed the checklist questions. I also examined statistical sources to determine the extent that those policies are being put into practice. Where jurisdiction over a particular policy area lies with the provinces and territories, my investigation focused on Manitoba.

Implementation of Article 27: The Right to an Adequate Standard of Living

Article 27 of the CRC recognizes “the right of every child to a standard of living adequate for the child’s physical, mental, moral, and social development”. The questions identified in the *Implementation Handbook of the Convention on the Rights of the Child* as indicators of the implementation of this Article were: 1) Has the State identified the minimum standard of living necessary to secure the child’s development?; 2) Are measures adopted to analyze why children’s conditions of living are insufficient for their proper development?; 3) Where children are in need, whether with their parents or otherwise, are they provided with necessary material assistance and support programs to secure their proper development?; and 4) Are measures and procedures taken in order to identify all children within the State who are in need because their parents are unable to secure adequate standards of living for them?

I examined government and non-government policy documents to determine the answers to each of these questions for Aboriginal and non-Aboriginal children separately. The search for policy documents revealed that there is much more information available from non-government than government sources. The documents that I examined are shown in Table 1.

For each group (Aboriginal and non-Aboriginal children), scores were assigned on each question as follows: criterion not met = 1; in progress/criterion partially met = 2; criterion met = 3. The *Implementation Handbook for the Convention on the Rights of the Child* (Hodgkin & Newell, 2007) scores each criterion as a Yes or No. This study adapted the scoring to allow for situations in which a criterion is partially met. The scores were then summed to create two Right- to-an-Adequate-Standard-of-Living Implementation scores - one for Aboriginal Children and one for Non-Aboriginal Children. Each Implementation score could range from 4 (not at all implemented) to 12 (fully implemented), with higher scores indicating greater implementation of Article 27. In addition to examining these

Table 1

Documents Examined to Evaluate Canada's Implementation of Article 27 of the CRC

Federal Government Documents	Provincial Government Documents	Non-governmental Documents	UN Committee Documents
<i>Indian Act</i> (Department of Justice, 2012)	<i>All Aboard: Manitoba's Poverty Reduction and Social Inclusion Strategy</i> (Government of Manitoba, 2012)	<i>Aboriginal Children: Canada Must Do Better: Today and Tomorrow</i> (Canadian Council of Child and Youth Advocates, 2011)	<i>Consideration of Reports Submitted under Article 44 of the Convention</i> (United Nations Committee on the Rights of the Child, 2012)
<i>A Canada Fit for Children</i> (Government of Canada, 2004)	<i>The Poverty Reduction Strategy Act</i> (Government of Manitoba, 2012)	<i>Not There Yet: Canada's Implementation of the General Measures of the Convention on the Rights of the Child</i> (UNICEF Innocenti Research Centre & UNICEF Canada, 2009)	
<i>Federal Poverty Reduction Plan: Working in Partnership towards Reducing Poverty in Canada</i> (Standing Committee on Human Resources, Skills and Social Development and the Status of Persons with Disabilities, 2010)		<i>Revisiting Family Security in Insecure Times</i> (Campaign 2000, 2011)	
		<i>Portrait of Poverty</i> (Social Planning Council of Winnipeg, 2011)	
		<i>Recommendations for Implementing the</i>	

		<i>Poverty Reduction Strategy Act - Manitoba</i> (Social Planning Council of Winnipeg, 2012)	
		<i>Needed: A federal action plan to eradicate child and family poverty in Canada</i> (Campaign 2000, 2012)	
		<i>Right in Principle, right in practice: Implementation of the Convention on the Rights of the Child in Canada</i> (Canadian Coalition for the Rights of Children, 2011)	

quantitative indicators of Article 27 implementation, I explored the qualitative dimensions of the relevant policies to gain a fuller understanding of them. This was done through examining other relevant documents that provided broader information on those policies.

Implementation of Articles 19, 34 and 35: The Right to Protection from Violence

Article 19 requires States to “take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence.” The questions identified in the *Implementation Handbook for the Convention on the Rights of the Child* as indicators of the implementation of this Article were: 1) Does legislation in the State protect children from sexual, physical or psychological violence?; 2) Has the State taken appropriate measures to prevent all forms of violence to children?; and 3) Has the State taken particular measures to identify and respond to sexual abuse within the family and in institutions?

Article 34 requires States “to protect the child from all forms of sexual exploitation and sexual abuse.” The questions identified in the *Implementation Handbook for the Convention on the Rights of the Child* as indicators of the implementation of this Article were: 1) Has the State considered the implications for law, policy and practice of the Declaration and Agenda for Action of the 1996 World Congress against Commercial Sexual exploitation of children and the 2001 Yokohama Global Commitment and developed a national agenda for action?; 2) Has the State defined unlawful sexual activity involving children?; 3) Has the State introduced appropriate legislative, educational and social measures to prevent the inducement or coercion of a child to engage in any unlawful sexual activity?; 4) Has the State ensured that the child victim of such coercion, inducement or exploitative use is not criminalized?; and 5) Is there sufficient recording and reporting of disaggregated data, and other information concerning sexual exploitation of children, to provide an accurate situation analysis?

Article 35 requires States “to protect the child against all other forms of exploitation prejudicial to any aspects of the child’s welfare.” The questions identified in the *Implementation Handbook for the Convention on the Rights of the Child* as indicators of the implementation of this Article were: 1) Have legal and administrative measures been adopted to ensure that children abducted within the jurisdiction are found as speedily as possible and returned?; 2) Has the State ratified the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution, and Child Pornography (2000)?; 3) Are all forms of the sale or trafficking of children illegal, including when perpetrated by parents?; 4) Are measures taken to ensure that children who are victims of cross-border trafficking can return safely and lawfully to their country of origin?; and 5) Is there a national data base of both missing children and known offenders in child trafficking?

I examined government and non-government policy documents to determine the answers to each of these questions for Aboriginal and non-Aboriginal children separately. The search for policy documents revealed that there is much more information available from non-government than government sources. Table 2 shows the documents that I examined. For each group (Aboriginal and non-Aboriginal), scores were assigned on each question as follows: criterion not met = 1; in progress/criterion partially met = 2; criterion met = 3. The scores were then summed to create two Right-to-Protection-from-Violence scores, one for Aboriginal Children and one for Non-Aboriginal Children. Each Implementation score could range from 13 (not at all implemented) to 39 (fully implemented), with higher scores indicating greater implementation of Articles 19, 34, and 35. In addition to examining these quantitative indicators of implementation of Articles 19, 34, and 35, I explored the qualitative dimensions of the relevant policies to gain a fuller understanding of them. This was done through examining other relevant documents that provided broader information on those policies.

Table 2

Documents Examined to Evaluate Canada's Implementation of Articles 19, 34, and 35 of the CRC

Federal Government Documents	Non-governmental Documents	UN Committee Documents
<i>Criminal Code</i> (Department of Justice, 2012)	<i>Civil Society Report on Canada's Implementation of the Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography</i> (Canadian Coalition for the Rights of Children, 2011)	<i>Consideration of Reports Submitted under Article 44 of the Convention</i> (United Nations Committee on the Rights of the Child, 2012)
<i>Canadian Incidence Study of Reported Child Abuse and Neglect – 2008</i> (Trocmé., et al, 2010)	<i>Kiskisik Awasisak: Remember the Children. Understanding the Overrepresentation of First Nation's Children in Child Welfare System</i> (Sinha, Trocmé, Fallon, MacLaurin, Fast, Prokop, et al, 2011)	<i>Consideration of Reports Submitted by States Parties under Article 12, paragraph 1, and the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography</i> (United nations Committee on the Rights of the Child, 2012)
<i>A Canada Fit for Children</i> (Government of Canada, 2004)	<i>Not There Yet: Canada's Implementation of the General Measures of the Convention on the Rights of the Child</i> (UNICEF Innocenti Research Centre and UNICEF Canada, 2009)	
<i>Family Violence Initiative</i> (Government of Canada, 2010)	<i>Declaration and Agenda for Action of the 1996 World Congress Against Commercial Sexual Exploitation of Children</i> (First World Congress, 1996)	
	<i>The 2001 Yokohama Global Commitment</i> (Second World	

	Congress, 2001)	
	<i>Violence Against Children</i> (Canadian Coalition for the Rights of Children, 2011)	

Implementation of Articles 18, 20, and 25: The Right to Parental or High Quality

Alternative Care. Article 18 of the CRC requires States Parties “to recognize the principle that

both parents have common responsibilities for the upbringing and development of the child.”

The questions identified in the *Implementation Handbook for the Convention on the Rights of the Child* as indicators of the implementation of this Article were: 1) Does legislation support parents’ primacy of responsibility for children’s upbringing and development?; 2) Does legislation make clear that the exercise of parental responsibility has the best interests of the child as its basic concern?; 3) Are laws, administrative systems, tax and welfare measures and public education aimed at supporting both parents’ common responsibilities for, and active participation in their child’s upbringing?; 4) Is there a presumption in law that children’s best interests, unless proved to the contrary, are in maintaining contact with both parents?; and 5) Are all parents provided with financial support, housing, appropriate child care equipment, day care and respite care or advice and counseling where necessary?

Article 20 of the CRC recognizes that “a child temporarily or permanently deprived of his or her family environment, or in whose own best interests cannot be allowed to remain in that environment, shall be entitled to special protection and assistance provided by the State.”

The questions identified in the *Implementation Handbook for the Convention on the Rights of the Child* as indicators of the implementation of this Article were: 1) Are parents provided with appropriate support to avoid the need to seek alternative care for the child?; 2) When children cannot be cared for by parents, are systematic efforts made to seek a placement with members of their wider family, with appropriate support where necessary?; 3) Is there a legal obligation on the State to provide appropriate care for children deprived of their family environment?; 4) Are staff trained to secure children’s rights under the Convention?; and 5) When choosing or supporting a placement, do the social work authorities pay due regard to

the desirability of continuity in the child's upbringing in relation to the child's ethnic, religious, cultural, or linguistic background?

Article 25 of the CRC requires States Parties "to recognize the right of a child who has been placed by the competent authorities for the purposes of care, protection or treatment of his or her physical or mental health, to a periodic review of the treatment provided to the child and all other circumstances relevant to his or her placement. The questions identified in the *Implementation Handbook for the Convention on the Rights of the Child* as indicators of the implementation of this Article were: 1) Are legal and/or formal administrative measures adopted to ensure the periodic review of each child who has been placed for the purpose of care and protection, including foster care, adoption, child-care institutions, boarding schools, and prisons and detention centres?; 2) Are such reviews required to consider the treatment of the child (including all aspects of his or her care), placement of the child (including whether its continuation is necessary), and the views of the child (ascertained in private)?; and 3) Are such reviews at sufficient intervals to secure the child's protection and welfare?

I examined government and non-government policy documents to determine the answers to each of these questions for Aboriginal and non-Aboriginal children separately. The search for policy documents revealed that there is much more information available from non-government than government sources. The documents I examined are shown in Table 3.

For each group, scores were assigned on each question as follows: criterion not met = 1; in progress/criterion partially met = 2; criterion met = 3. The scores were then summed up to create two Right-to-Parental-or-High-Quality-Alternative-Care Implementation scores, one for Aboriginal children and one for non-Aboriginal children. Each implementation score could range from 13 (not at all implemented) to 39 (fully implemented), with higher scores indicating greater implementation of Articles 18, 20, and 25. If a clear answer could not be

Table 3

Documents Examined to Evaluate Canada's Implementation of Articles 18, 20, and 25 of the CRC

Federal Government Documents	Provincial Government Documents	Non-governmental Documents	UN Committee Documents
<i>A Canada Fit for Children</i> (Government of Canada, 2004)	<i>The Child and Family Services Act - Manitoba</i> (Government of Manitoba, 2012)	<i>Right in Principle, right in practice: Implementation of the Convention on the Rights of the Child in Canada</i> (Canadian Coalition for the Rights of Children, 2011)	<i>Consideration of Reports Submitted under Article 44 of the Convention</i> (United Nations Committee on the Rights of the Child, 2012)
		<i>The Canadian Human Rights Tribunal on First Nations Child Welfare: Why if Canada Wins, Equality and Justice Lose</i> (Blackstock, 2010)	<i>Consideration of Reports Submitted by States Parties under Article 12, paragraph 1, and the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography</i> United Nations Committee on the Rights of the Child, 2012)
		<i>Protecting the Rights of Children in Alternative Care and Government Care</i> (Canadian Coalition for the Rights of Children, 2011)	

		<i>Best Interests of the Child: Meaning and Application in Canada</i> (Canadian Coalition for the Rights of Children, 2009)	
		<i>Not There Yet: Canada's Implementation of the General Measures of the Convention on the Rights of the Child</i> (UNICEF Innocenti Research Centre and UNICEF Canada, 2009)	

determined on a particular question, the question was scored 4, but this item score was not included in the implementation score. In addition to examining these quantitative indicators of Articles 18, 20 and 25 implementation, I explored the qualitative dimensions of the relevant policies to gain a fuller understanding of them. This was done through examining other relevant documents that provided broader information on those policies.

CHAPTER 4

Findings

I conducted a policy analysis to examine the degree to which Canada implements the CRC articles relating to the three primary predictors of commercial sexual exploitation. Poverty was labelled as risk factor 1 and was measured by implementation of article 27. Exposure to family violence and involvement with the child welfare system were labelled risk factors 2 and 3, respectively. Exposure to family violence was measured by implementation of articles 19, 34 and 35 while involvement with the child welfare system was measured by articles 18, 20 and 25. I had predicted that these articles would have been implemented to a lesser extent for Aboriginal than non-Aboriginal children.

Risk Factor 1: Poverty

Implementation of article 27: The right to an adequate standard of living. Four criteria were used to measure the right to an adequate standard of living. For each criterion, I assigned a score for policy related to Aboriginal children, and a second score for policy related to non-Aboriginal children. Each criterion met was scored 3, each criterion partially met was scored 2 and each criterion not met at all was scored 1. The four criterion scores were summed to create a Right to an Adequate Standard of Living Implementation Score which could range from 4 (no criteria met) to 12 (all criteria met) with higher scores indicating greater implementation of article 27. The Implementation Score was 4 for both Aboriginal and non-Aboriginal children. A summary of the CRC implementation scores for Aboriginal children and non-Aboriginal children is shown in Table 4.

Table 4

Summary of CRC Implementation Scores for Aboriginal and Non-Aboriginal Children: The Right to an Adequate Standard of Living

Rights Standards	Implementation Criterion	Implementation Score	
		Aboriginal Children	Non-Aboriginal Children
Article 27: Right to an adequate standard of living	1: Has the state has identified the minimum standard of living necessary to secure the child's development?	1	1
	2: Have measures been adopted to analyze why children's conditions of living are insufficient for their proper development?	1	1
	3: Are children provided with necessary material assistance and support programs to secure their proper development where they are in need, whether with their parents or otherwise?	1	1
	4: Are measures and procedures taken in order to identify all children within the state who are in need because their parents are unable to secure adequate standards of living for them?	1	1
	Total Implementation Score	4	4

Criterion 1 assessed whether the State has identified the minimum standard of living necessary to secure the child's development. Both Aboriginal and non-Aboriginal children scored 1 indicating that the minimum standard of living has not been identified for either group. Available data indicate that the Canadian government has not adopted an official definition or measure of poverty. According to Statistics Canada (2011), several measures of low income are used, including the Low Income Cut Off (LICO) Before and After Tax, the Market Basket Measure (MBM) and the Low Income Measure (LIM) Before and After Tax. Therefore, no clear cut-off has been established to define the minimum standard of living necessary to secure children's development.

Criterion 2 assessed whether measures have been adopted to analyze why children's conditions of living are insufficient for their proper development. Both Aboriginal and non-Aboriginal children scored 1 on this criterion. To analyze why children's conditions of living are not sufficient for their proper development requires the ability to assess the impact of investments in children and their wellbeing. A child-specific budget allows for identifying, monitoring, reporting and evaluating the impact of such investments. Such a budget does not exist in Canada (United Nations Committee on the Rights of the Child, 2012), making it difficult to identify expenditures on children. The UN Committee on the Rights of the Child assessed Canada's approach to this issue as follows:

Bearing in mind that the State party is one of the most affluent economies of the world and that it invests sizeable amounts of resources in child-related programmes, the Committee notes that the State party does not use a child-specific approach for budget planning and allocation in the national and provincial/territorial level budgets, thus making it practically impossible to identify, monitor, report and evaluate the impact of investments in children and the overall application of the Convention in budgetary terms. Furthermore, the Committee also notes that while the State party

report contained information about various programs and their overall budget the Committee regrets that the report lacked information on the impact of such investments (United Nations Committee on the Rights of the Child, 2012).

Further, the federal government does not disclose to the general public how the universal child benefit, the child tax credit, and the sports and arts education tax credits impact children in poor families and children in more affluent families differently (Canadian Coalition on the Rights of Children, 2011). Child impact assessments have not been implemented to evaluate whether funding priorities are meeting children's developmental needs (UNICEF Innocenti Research Centre & UNICEF Canada, 2009).

Criterion 3 assessed whether children are provided with necessary material assistance and support programs to secure their proper development where they are in need, whether with their parents or otherwise. Both Aboriginal and non-Aboriginal children scored 1 on this criterion. In Canada, "nearly one in ten children still lives in poverty" (Campaign 2000, 2011, p. 1). The federal government's promise to end poverty by the year 2000 has not materialized. In fact, even though the economy has doubled, the incomes of families with incomes in the lowest decile have stagnated (Campaign 2000, 2011). The standard of living of parents on welfare has actually been reduced since the provinces and territories were authorized to deduct the amount of the National Child Benefit from parents' social welfare benefits (United Nations Committee on the Rights of the Child, 2012).

Although Aboriginal and non-Aboriginal children obtained scores of 1 on Criterion 3, their equivalent scores fail to reflect the inequities in policies related to material assistance. When the actual policies affecting the two groups are compared, it becomes clear that Aboriginal children in need are receiving even less material assistance than non-Aboriginal children in need, as illustrated by numerous examples. First, in 2008 the Auditor General found that funding for child welfare services for Aboriginal children was 22% less than

similar services for non-Aboriginal children (Canadian Coalition for the Rights of Children, 2011; FNCFCFS, 2013; United Nations Committee on the Rights of the Child, 2012; UNICEF Innocenti Research Centre & UNICEF Canada, 2009). To date, the federal government has failed to address this inequity, which presents another poverty-related barrier to Aboriginal children's healthy development (Canadian Coalition for the Rights of Children, 2011).

Second, Aboriginal children have lower educational attainment overall than non-Aboriginal children due to higher drop-out rates (United Nations Committee on the Rights of the Child, 2012; Wilson & Macdonald, 2010). This situation increases the likelihood of these children growing up to live in poverty, as their chances of acquiring employment are lower (Standing Committee on Human Resources, Skills and Social Development and the Status of Persons with Disabilities, 2010).

Third, compared to non-Aboriginal children, a higher percentage of Aboriginal children live in overcrowded and substandard housing requiring major repairs (Standing Committee on Human Resources, Skills and Social Development and the Status of Persons with Disabilities, 2010). According to the Assembly of First Nations' 2013 annual report, of the estimated backlog of 130,000 housing units, 44% of existing units will need major repairs and 18% will need to be replaced between 2010 and 2031 (Assembly of First Nations, 2012-13). Fourth, despite the fact that the Aboriginal population is increasing, the federal government will not increase the budget for services to their communities which remains capped at 2% of annual growth (Campaign 2000, 2011). Fifth, Aboriginal children's nutrition is poorer than that of non-Aboriginal children due to the high cost and frequent unavailability of nutritious food on reserve (Standing Committee on Human Resources, Skills and Social Development and the Status of Persons with Disabilities, 2010). As a result, Aboriginal children disproportionately acquire nutrition-related sicknesses, including nutritional deficiencies, childhood obesity and Type 2 diabetes (Canadian Feed the Children, 2013).

Finally, Aboriginal children are more likely than non-Aboriginal children to live in poor and unsanitary conditions (Canadian Coalition for the Rights of Children, 2011). For example, in 2008 and 2009, more than 100 First Nation reserves were advised by the federal government to boil their drinking water because a quarter of on-reserve water treatment systems posed a high risk to human health (Amnesty International, 2009).

Rather than mitigating the poverty of Aboriginal children, government policies exacerbate it. Therefore, although criterion 3 was not met for either Aboriginal or non-Aboriginal children, a closer examination of Canadian policies reveals that Aboriginal children's material needs are being neglected to an even greater extent than non-Aboriginal children's needs.

Criterion 4 assessed whether measures and procedures are taken in order to identify all children within the State who are in need because their parents are unable to secure adequate standards of living for them. Both Aboriginal and non-Aboriginal children scored 1 on this criterion indicating that it is not possible to identify all children in need. Since the federal government cancelled the long-form census in 2010, there has been no reliable source of data on poverty rates with demographic breakdowns (Campaign 2000, 2011). The long-form census was replaced by the Voluntary National Household Survey, reducing reliability of data due to a smaller sample (Campaign 2000, 2012). Consequently, tracking child poverty rates over time has become more difficult. Obtaining reliable data has been a challenge in smaller Canadian provinces and especially in the territories due to problems presented by sample sizes. Until the long-form census or another reliable data source is re-introduced it will be impossible to accurately track child poverty rates (Campaign 2000, 2012).

Risk Factor 2: Exposure to Family Violence

Implementation of articles 19, 34 and 35: The right to protection from violence.

Implementation of Article 19 was measured by three criteria; Article 34 by five criteria; and

Article 35 by four criteria. For each criterion, I assigned a score for policy related to Aboriginal children, and a second score for policy related to non-Aboriginal children. Each criterion met was scored 3, each criterion partially met was scored 2 and each criterion not met at all was scored 1. Scores on the 12 criteria were summed to create a Right to Protection from Violence Implementation Score which could range from 12 (no criteria met) to 36 (all criteria met) with higher scores indicating greater implementation of articles 19, 34 and 35. The total Implementation Score for both Aboriginal and non-Aboriginal children was 18. A summary of the CRC implementation score for Aboriginal and non-Aboriginal children is shown in Table 5

Implementation of article 19. Article 19 calls for all appropriate legislative, administrative, social and educational measures to be taken to *protect* the child from all forms of physical or mental violence. Three criteria were used to measure implementation of this article. Criterion 1 assessed whether legislation within the State protects children from all sexual, physical and psychological violence. Both Aboriginal and non-Aboriginal children obtained a score of 2 indicating that this criterion has been partially met. Many forms of violence are prohibited by federal, provincial and territorial laws; however, these laws are neither comprehensive nor do they fully extend to children (Canadian Coalition for the Rights of Children, 2011). While prevention is the most effective way to protect children from violence, it receives very little attention or investment (Canadian Coalition for the Rights of Children, 2011). The Criminal Code of Canada prohibits various forms of sexual abuse and exploitation of children including sexual assault, sexual exploitation, using the internet to lure children for sexual purposes and/or abduction and trafficking in person for exploitative reasons (Canadian Council of Child and Youth Advocates, 2011). Offences fall under different sections and subsections: sexual interference (s. 151); invitation to sexual touching (s. 152); sexual exploitation (s. 153); incest (s. 155); child pornography (s. 163.1); luring a

Table 5

Summary of CRC Implementation Scores for Aboriginal and Non-Aboriginal Children: The Right to Protection from Violence

Rights Standard	Implementation Criterion	Implementation Score	
		Aboriginal Children	Non-Aboriginal Children
Article 19: Right to protection from all forms of physical or mental violence	1: Does legislation within the State protect children from all sexual, physical and psychological violence?	2	2
	2: Has the State taken appropriate measures to prevent all forms of violence against children?	1	1
	3: Have particular measures been taken to identify and respond to sexual abuse within the family and in institutions?	3	3
Article 34: Right to protection from all forms of sexual exploitation and sexual abuse	1: Does the State consider the implications for law, policy and practice of the Declaration and Agenda for Action of the Stockholm 1996 World Congress against Commercial Sexual Exploitation of Children and the 2001 Yokohama Global Commitment and developed a national agenda for action?	1	1
	2: Has the State defined unlawful sexual activity involving children?	2	2
	3: Has the State introduced appropriate legislative, educational and social measures to prevent the inducement or coercion of a child to engage in unlawful sexual activity?	1	1
	4: Does the State ensure that child victims of coercion, inducement or exploitation are not criminalized?	1	1
	5: Is there sufficient recording and reporting of disaggregated data, and other information concerning sexual exploitation of children, to provide an accurate situation analysis?	1	1
Article 35: Right to	1: Have legal and administrative measures	1	1

protection from all other forms of exploitation	been adopted to ensure that abducted children are found as speedily as possible and returned?		
	2: Has the State ratified the Optional Protocol to the CRC on the Sale of Children, Child Prostitution and Child Pornography?	3	3
	3: Are all forms of the sale or trafficking of children illegal, including that perpetrated by parents?	1	1
	4: Is there a national data base of both missing children and known offenders in child trafficking?	1	1
	Total Implementation Score	18	18

child (s. 172.1); transporting a person to a bawdy house (s. 211); procuring (s. 212); aggravated sexual assault (s. 273); removal of a child from Canada (s. 273.3); abduction of a person under 16 (s. 280); abduction of a person under 14 (s. 281) (Department of Justice, 2012).

However, legislation has failed to protect children from all forms of physical and psychological violence. For example, corporal punishment is authorized by law under section 43 of the Criminal Code (Department of Justice, 2012), which states that using force as a means of correction is justified (and therefore a rightful act) as long as the force does not exceed what is reasonable under the circumstances. Children are also unprotected from underage marriage due to lack of legislative measures and law enforcement (United Nations Committee on the Rights of the Child, 2012). Children are regularly trafficked between polygamous sects in British Columbia and Utah in the United States without law enforcement intervention (Canadian Coalition for the Rights of the Child, 2011).

Criterion 2 assessed whether the state has taken appropriate measures to *prevent* all forms of violence against children. Both Aboriginal and non-Aboriginal children obtained a score of 1 indicating that this criterion has not been met. For example, most Canadians feel that bullying is a serious issue faced by students which requires consolidated effort and greater public attention (Canadian Council on Learning, 2007). There is no national comprehensive program to prevent bullying in Canada. There also is no national strategy to prevent physical and emotional punishment of children; the federal government's Nobody's Perfect Program targets at-risk families, which means that it is not available to families who fall outside the demographic categories defining risk.

Criterion 3 assessed whether particular measures are taken to identify and respond to sexual abuse within the family and in institutions. Both Aboriginal and non-Aboriginal children obtained a score of 3 on this criterion. However this numerical score failed to

capture inequities in the provision of programs and services accessible to these two groups of children. Aboriginal children require special programs because they are vulnerable to experiencing violence and are disproportionately subject to sexual abuse due to intergenerational disadvantages and socio-economic factors (Assembly of First Nations, N.D; Canadian Coalition for the Rights of Children, 2011; Canadian Council of Child and Youth Advocates, 2011). The services and information that are available are often not accessible to children in northern communities or those living outside large cities (Canadian Coalition on the Rights of Children, 2011). The needs of children and youth residing in the north are also greater and more expensive to provide especially in rural and northern contexts.

Administration of child welfare services and travel is expensive as well. Services for young people have been reduced further by funding cuts to social services (Canadian Coalition for the Rights of Children, 2011). The Family Violence Prevention Program was introduced in 1998 as a long-term federal commitment with a mandate to enhance awareness about family violence, build a knowledge base and strengthen the ability of the justice, housing and health systems and communities to prevent and respond to family violence (Government of Canada, 2010). But despite the introduction of the program, family violence remains widespread with unequal access provided to protection and services across jurisdictions (Canadian Coalition for the Rights of Children, 2011). This situation exacerbates the vulnerabilities of Aboriginal children (United Nations Committee on the Rights of the Child, 2012). According to the findings of the Canadian Incidence Study of Reported Child Abuse and Neglect, 2607 children experienced sexual abuse in 2008 (Trocmé, et al, 2010) and this figure is “the tip of the iceberg”, as it represents only those cases that were detected, reported, investigated and substantiated. According to the First Nations Component of the Canadian Incidence Study of Reported Child Abuse and Neglect 2008 report, incidence rates were higher among Aboriginal than non-Aboriginal children. Findings of this study revealed that there were

140.6 child maltreatment related investigations for every 1000 First Nations children compared with 33.5 investigations for every 1000 non-Aboriginal children (Sinha, Trocmé, Fallon, MacLaurin, Fast, Prokop, et al, 2011). Of great concern is the low number of interventions and restraining orders imposed when family violence occurs (United Nations Committee on the Rights of the Child, 2012).

Implementation of article 34. Article 34 obligates States to protect children from all forms of sexual exploitation and sexual abuse. Criterion 1 assessed whether the State considers the implications for law, policy and practice of the Declaration and Agenda for Action of the Stockholm 1996 World Congress against Commercial Sexual Exploitation of Children and the 2001 Yokohama Global Commitment, and whether the State has developed a national agenda for action. Both Aboriginal and non-Aboriginal children obtained a score of 1 on this criterion. No national agenda for action has been developed. Various national plans and strategies have been adopted, such as the National Plan to Combat Human Trafficking (2012), the National Strategy to Protect Children from Sexual Exploitation on the Internet (2004) and A Canada Fit for Children (2004). However, the Canadian government has not yet developed a comprehensive national plan of action to combat commercial sexual exploitation of children, despite the commitments it made to do so in Stockholm and Yokohama (Canadian Coalition for the Rights of Children, 2011; United Nations Committee on the Rights of the Child, 2012). Without a national plan of action, progress and setbacks are impossible to track and strategies are likely to be ineffective (Canadian Coalition for the Rights of Children, 2011). A national plan of action would allow for the development of effective strategies through holistic and uniform data collection on policies, programs and financial resources (Canadian Coalition for the Rights of Children, 2011).

Criterion 2 assessed whether the State has defined unlawful sexual activity involving children. The Criminal Code identifies sexual acts involving children that are considered

unlawful. These fall under the Code's sections on sexual interference, invitation to sexual touching, sexual exploitation, and child pornography (Department of Justice, 2012).

However, the definitions of unlawful sexual activity involving children are inadequate. For example, the Criminal Code does not define child prostitution but contains several offences that address it, namely soliciting, procuring and living on avails. Therefore, both Aboriginal and non-Aboriginal children obtained scores of 2 on this criterion.

Criterion 3 assessed whether the State has introduced appropriate legislative, educational and social measures to prevent the inducement or coercion of a child to engage in any unlawful sexual activity. Both Aboriginal and non-Aboriginal children obtained scores of 1 on this criterion indicating that measures in place are insufficient for both Aboriginal and non-Aboriginal children. There is weak enforcement of laws in some provinces and territories due to a lack of necessary resources and inadequate measures to prevent forced underage marriages (United Nations Committee on the Rights of the Child, 2012). The Optional Protocol to the CRC on the Sale of Children, Child Prostitution and Child Pornography obligates governments to criminalize and punish activities related to these offences (UNICEF, 2005). While Canada has ratified this Protocol, some provinces and territories have not enacted legislation to allow for compensation to child victims of the offenses in the Optional Protocol and neither can they access free legal counsel (United Nations Committee on the Rights of the Child, 2012). Although both Aboriginal and non-Aboriginal children obtained scores of 1 on Criterion 3, the situation for Aboriginal children is worsened by inequitable funding for community and social protection services (United Nations Committee on the Rights of the Child, 2012). Many cases of missing or murdered Aboriginal victims of child prostitution remain unsolved, allowing offenders to go unpunished (United Nations Committee on the Rights of the Child, 2012), and the absence of a comprehensive national action plan on stopping violence against women and girls increases

the likelihood that this situation will remain unchanged (Amnesty International, 2013). A database created by the Native Women's Association of Canada documented 520 cases of missing or murdered Aboriginal women and girls (NWAC, 2009). Moreover, the delay in funding Sisters in Spirit, a research, education and policy initiative whose goal is to conduct research and draw attention to violence against Aboriginal girls and women, makes this work even more difficult (Amnesty International, 2013).

Criterion 4 assessed whether the State ensures that child victims of coercion, inducement or exploitation are not criminalized. Both Aboriginal and non-Aboriginal children obtained a score of 1 indicating that this criterion has not been met. Although trafficking victims have been able to access shelter services, short term counseling, court assistance and other services, these are general services that other victims of other crimes access as well. This means that there are no government programs specially designed for trafficking victims (US Department of State, 2013). And in some provinces and territories, child victims of trafficking have been detained or deported as illegal migrants and criminal charges of prostitution have been filed against them (United Nations Committee on the Rights of the Child, 2012). The Criminal Code criminalizes many activities associated with prostitution, including those involving children (Department of Justice, 2012).

Criterion 5 assessed whether there is sufficient recording and reporting of disaggregated data, and other information concerning sexual exploitation of children, to provide an accurate situation analysis. Both Aboriginal and non-Aboriginal children obtained a score of 1 indicating that an accurate situation analysis of sexual exploitation of children is not possible. There is no central agency responsible for recording and reporting information concerning sexual exploitation of children in Canada, so reliable statistics cannot be obtained (Canadian Coalition for the Rights of Children, 2011). Since there is no single comprehensive national data source on violence and abuse against children and youth, a

number of sources are used to gather this information including self-report surveys, police reported data and surveys of child protection workers, such as the CIS (Government of Canada, 2010). However these types of data are likely to be strongly affected by under-reporting.

Implementation of article 35. Article 35 calls for protection of all children against all other forms of exploitation prejudicial to any aspects of their welfare. Criterion 1 assessed whether legal and administrative measures have been adopted to ensure that abducted children are found as speedily as possible and returned. Both Aboriginal and non-Aboriginal children obtained a score of 1 indicating that this criterion has not been met. Because Canada has not yet developed a comprehensive strategy to protect children from all forms of exploitation, efforts to find and return abducted children can be derailed due to the fact that when one jurisdiction puts effective measures in place, the problem shifts to another area where measures may be inadequate (Canadian Coalition for the Rights of Children, 2011). This phenomenon has become known as the “push down and pop-up” pattern of sexual exploitation. There also is need for increased attention to enforcement of laws; among the small number of suspects apprehended (relative to the number of complaints and violations), only about 50% of prosecutions lead to convictions (Canadian Coalition for the Rights of Children, 2011).

Criterion 2 assessed whether the state has ratified the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography. Both Aboriginal and non-Aboriginal children obtained scores of 3, indicating that this criterion has been met. However, although Canada ratified this Optional Protocol in 2005, only parts of it have been indirectly implemented under immigration, criminal, child protection and family laws and the Charter of Rights and Freedoms. Not only is there no clear evidence that provinces and territories comply with the Optional Protocol (Canadian

Coalition for the Rights of Children, 2011), its provisions have been inconsistently interpreted across the provinces and territories resulting in inconsistencies (United Nations Committee on the Rights of the Child, 2012). Such inconsistencies have compromised the full protection of children from sexual exploitation and abuse.

Criterion 3 assessed whether all forms of the sale or trafficking of children are illegal, including that perpetrated by parents. Both Aboriginal and non-Aboriginal children obtained a score of 1 indicating that this criterion has not been met. Not all forms of sale of children defined in articles 2 and 3 of the Optional protocol have been criminalized, namely

the sale of children by offering, delivering or accepting, by whatever means, a child for the purpose of sexual exploitation, transfer of organs of the child for profit, engagement of the child in forced labour by improperly inducing consent, as an intermediary, for the adoption of a child in violation of the applicable legal instrument on adoption and the production and dissemination of material encouraging any of these acts (United Nations Committee on the Rights of the Child, 2012. p. 6).

Criterion 4 assessed whether there is a national data base of both missing children and known offenders in child trafficking. Both groups obtained a score of 1 indicating that this criterion has not been met. While there are national data bases of missing children, there are none of known child-traffickers. The Canadian Centre for Child Protection operates a program known as Missingkids.ca whose data base contains a listing of nationally registered missing children in Canada (<http://www.missingkids.ca>). This program assists in the location of missing children; cases remain open until a child is located. Another data base of missing children exists under the Royal Canadian Mounted Police. This data base, known as the National Centre for Missing Persons and Unidentified Remains (NCMPUR), assists with investigations of missing persons and unidentified remains across Canada (Government of Canada, 2013). There is a National Sex Offender Registry. In 2004, the federal government

created a National Sex Offender Registry to provide information on crimes of a sexual nature to Canadian police services (Royal Canadian Mounted Police, 2008). However, there is no national data base that specifically documents and tracks child traffickers.

Risk Factor 3: Involvement with the Child Welfare System

Implementation of articles 18, 20 and 25: The right to parental care or high quality alternative care. Scores on this implementation scale could range from 13 (criteria not met at all) to 39 (all criteria met) with higher scores indicating greater implementation of articles 18, 20 and 25. The total implementation score was 26 for Aboriginal children and 27 for non-Aboriginal children. A summary of the CRC implementation scores for Aboriginal and a non-Aboriginal child is provided in Table 6.

Implementation of article 18. Article 18 of the CRC calls for States Parties to recognize that both parents have common responsibilities for the upbringing and development of their children. Five criteria were used to measure the implementation of this article. Criterion 1 assessed whether legislation supports the primacy of parents' responsibility for children's upbringing and development. Existing legislation in all provinces and territories recognizes that the primary responsibility for raising children lies with the family, and removing a child from the family should be considered a last resort (Canadian Coalition for the Rights of Children, 2011). As these laws apply to all children in Canada, both Aboriginal and non-Aboriginal children scored 3 on this criterion. Using the province of Manitoba as an example, the Legislative Assembly of Manitoba declared that one of the fundamental principles guiding the provision of services to children and families is that "the family is the basic source of care, nurture and acculturation of children and parents have the primary responsibility to ensure the well-being of their children" (Government of Manitoba, 2012, chapter C80, p.8).

Table 6

Summary of CRC Implementation Scores for Aboriginal and Non-Aboriginal Children: The Right to Parental Care or High Quality Alternative Care

Rights Standard	Implementation Criterion	Implementation Score	
		Aboriginal Children	Non-Aboriginal Children
Article 18: Right to parental care	1: Does legislation support the primacy of parents' responsibility for children's upbringing and development?	3	3
	2: Does legislation make clear that the exercise of parental responsibility has the best interests of the child as its basic concern?	1	1
	3: Are laws, administrative systems, tax and welfare measures and public education aimed at supporting both parents' common responsibilities for, and active participation in their child's upbringing?	1	1
	4: Is there a presumption in the law that children's best interests, unless proved to the contrary, are in maintaining contact with both parents?	3	3
	5: Are all parents provided with financial support, housing, appropriate child care equipment and respite care or advice and counselling?	1	1
Article 20: Right to high quality alternative care	1: Are parents provided with appropriate support to avoid the need to seek alternative care for the child?	1	2
	2: Are systematic efforts made to seek a placement with members of the wider family with appropriate support when children cannot be cared for by parents?	2	2
	3: Is there a legal obligation on the State to provide appropriate care for children deprived of their family environment?	3	3

	4: Are staff trained to secure children's rights under the CRC?	1	1
	5: Do social work authorities pay due regard to the desirability of continuity in the child's upbringing in relation to the child's ethnic, religious, cultural, or linguistic background when choosing or supporting a placement?	3	3
Article 25: Right to periodic review of treatment or placement of a child	1: Have legal and/or formal administrative measures been adopted to ensure the periodic review of each child who has been placed for the purpose of care and protection, including foster care, adoption, child-care institutions, boarding schools, and prisons and detention centres?	3	3
	2: Are the reviews required to consider the treatment of the child (including all aspects of his or her care), placement of the child (including whether its continuation is necessary), and the views of the child (ascertained in private)?	3	3
	3: Are reviews carried out at sufficient intervals to secure the child's protection and welfare?	1	1
	Total Implementation Score	26	27

Criterion 2 assessed whether legislation makes clear that the exercise of parental responsibility has the best interests of the child as its basic concern. Both Aboriginal and non-Aboriginal children scored 1 indicating that this criterion has not been met. Although the concept of “best interests of the child” is mentioned in family, immigration and child welfare laws, it not applied as a general principle of law in Canada (Canadian Coalition for the Rights of Children, 2009). An example is the law regarding corporal punishment. Research consistently shows that corporal punishment is not in the best interest of children (Durrant & Ensom, 2012). Yet section 43 of the Criminal Code justifies its use. As recently as 2004, the Supreme Court of Canada upheld the constitutionality of this law (Government of Canada, 2012; McGillivray & Durrant, 2012).

Criterion 3 assessed whether laws, administrative systems, tax and welfare measures, and public education are aimed at supporting both parents’ common responsibilities for, and active participation in, their children’s upbringing. Both Aboriginal and non-Aboriginal children obtained a score of 1, indicating that this criterion has not been met. The absence of a national poverty reduction strategy reduces the likelihood that all children will have equal opportunities for a good start in life (Canadian Coalition for the Rights of Children, 2011). In 2006 and 2007, changes were made to Canada’s income support programs, resulting in discrimination against children in low income households (Canadian Coalition for the Rights of Children, 2011). Compared with children in affluent families, children in poor families have been disadvantaged by the universal child care benefit program and the child tax credit; they receive a lesser benefit after taxes from the former and no benefit at all from the latter (Canadian Coalition for the Rights of Children, 2011). These families require more support, not less, to remain intact. Canada’s lack of an official measure of poverty (Statistics Canada, 2011) contributes to this problem, as it is challenging for child welfare workers to clearly differentiate between poverty and neglect (Canadian Coalition for the Rights of Children,

2009). As a result, many children have been placed in out-of-home care due to their parents' financial inability to care for them (National Children's Alliance, 2005). Aboriginal children are over-represented in the child welfare system (National Children's Alliance, 2005). As of May 2005, 1 in 10 Status Indian children were in child welfare care, compared with 1 in 200 non-Aboriginal children (FNCFCS, 2004/2005). Many are removed from their families because preventive measures and assistance and support services, such as education, counselling and community-based programmes are inadequate (United Nations Committee on the Rights of the Child, 2012).

Criterion 4 assessed whether there is a presumption in the law that children's best interests, unless proved to the contrary, are in maintaining contact with both parents. Both Aboriginal and non-Aboriginal children obtained scores of 3, indicating that this criterion has been met. In Canada, child custody laws give children the right to access to both parents (Department of Justice, N.D). However, current practices reveal that contested cases are associated with high rates of father absence (Kruk, 2008), as sole maternal custody is usually awarded. Moreover, a higher proportion of Aboriginal than non-Aboriginal people are incarcerated (Office of the Correctional Investigator, 2013). Therefore the likelihood of having access to both parents is lower among Aboriginal children given that children visiting parents in prison is, in many cases, deemed not to be in the best interests of the child by child welfare authorities.

Criterion 5 assessed whether all parents are provided with financial support, housing, appropriate child care equipment and respite care or advice and counselling. Both Aboriginal and non-Aboriginal children scored 1 indicating that this criterion has not been met. The United Nations Committee on the Rights of the Child observes that:

despite the State Party's significant resources, there has been a lack of funding directed towards the improvement of early childhood development and affordable and

accessible early childhood care and services. The Committee is also concerned by the high cost of child-care, the lack of available places for children, the absence of uniform training requirements for all child-care staff and of standards of quality care. The Committee notes that early childhood care and education continues to be inadequate for children under four years of age. Furthermore, the Committee is concerned that the majority of early childhood care and education services in the State party are provided by private, profit-driven institutions, resulting in such services being unaffordable for most families (United Nations Committee on the Rights of the Child, 2012, p. 17).

In Canada, there is no national family or child policy, resulting in ineffective coordination of policies impacting children and families (Canadian Coalition for the Rights of Children, 2011). In 2005, bilateral agreements between the federal government and the provinces/territories to increase federal transfers were reached (Dallaire & Anderson, 2009) and provinces and territories were under obligation to establish plans that would improve access to quality affordable early learning and child care. Regrettably, in 2006, all efforts toward building a national child care system were cancelled by the current government and child care transfers to the provinces and territories were reduced by almost 1.2 million dollars, affecting the growth and availability of child care spaces (Canadian Coalition for the Rights of Children, 2011; Dallaire & Anderson, 2009). In 2010, available spaces could only cover 21.8% of children under 6 and 19.9% of children under 13 (Campaign 2000, 2012), with fees being higher than university tuition. On average, parents in Canada are on child care waiting lists for two years or more. Daycare fees vary from \$154 per month in Quebec to \$414 in Manitoba, and \$600 to \$800 in the other provinces and territories (Campaign 2000, 2012). The current child care situation is particularly challenging for low-income and single-

parent households (Canadian Coalition for the Rights of Children, 2011), where Aboriginal children are over-represented (NWAC, 2006; O'Donnell & Wallace, 2011).

The inadequacy of financial support to families in Canada is exemplified by the fact that although children are only 21% of the population, they make up 38% of people who access food banks (Food Banks Canada, 2012). Aboriginal people make up 11.3% of those helped by the food banks, yet they account for only 4% of the population (Statistics Canada, 2006).

Implementation of article 20. Article 20 obligates States Parties to provide special protection and assistance to children who are temporarily or permanently deprived of a family environment, or in whose own best interest cannot be allowed to remain in that environment. Five criteria were used to measure implementation of this article. Criterion 1 assessed whether parents are provided with appropriate support to avoid the need to seek alternative care for the child. In fact, removing children from their families has been the first option in cases of neglect, financial hardship or disability and this has been a serious concern for the United Nations Committee on the Rights of the Child (United Nations Committee on the Rights of the Child, 2012). The over-representation of Aboriginal children among children in care (Farris-Manning & Zandstra, 2003) suggests that many Aboriginal families are not able to avoid the need to seek alternative care for their children. For example, many families in Inuit communities enter a state of crisis because they lack the financial or preventative social services needed to address their challenges (National Aboriginal Health Organization [NAHO], 2011). Aboriginal children obtained a score of 1 on this criterion because government funding to First Nations Child and Family Services Agencies does not allow them to provide adequate family support and family preservation services to at-risk families, which would allow children remain at home (FNCFCFS, 2004). Non-Aboriginal children obtained a score of 2. Non-Aboriginal families have higher funding for child welfare

services and are in a better position to avoid the need to seek alternative care for their children even when they enter a state of crisis.

Criterion 2 assessed whether systematic efforts are made to seek a placement with members of the wider family, with appropriate support, when children cannot be cared for by their parents. Both Aboriginal and non-Aboriginal children obtained scores of 2, indicating that this criterion has been partially met. While there is little information on the proportion of Aboriginal children placed in Aboriginal homes as not all provinces and territories track this, available data suggest that the proportion of race-matched placements for Aboriginal children appears to be small (Trocmé, Knoke & Blackstock, 2004). British Columbia's 1998 Annual Report revealed that only 2.5 % of Aboriginal children in care were placed in race-matched homes despite a statutory requirement to give priority to Aboriginal homes (Blackstock & Bennett, 2003). More recent data by the British Columbia Ministry of Children and Family Development reported that 862 children who left their parental homes were able to remain with extended family or in their communities in 2010/11. During the same year, 56.8% of Aboriginal children who left their parental homes were receiving services delivered by Aboriginal agencies, Aboriginal foster care providers or Aboriginal friends and family (British Columbia Ministry of Children and Family Development, 2012).

Criterion 3 assessed whether there is a legal obligation on the state to provide appropriate care for children deprived of their family environment. Both Aboriginal and non-Aboriginal children obtained a score of 3. Canada is a dualist nation with a division of powers between the federal government and provinces/territories (UNICEF Innocenti Research Centre and UNICEF Canada, 2009). Provinces and territories meet this criterion for non-Aboriginal children as they are responsible for child welfare off-reserve, while the federal government meets this criterion for Aboriginal children on-reserve.

Criterion 4 assessed whether staff are trained to secure children's rights under the CRC. Both Aboriginal and non-Aboriginal children scored 1, indicating that this criterion has not been met. There is no systematic training for professionals working with children, resulting in limited awareness and knowledge of the CRC (United Nations Committee on the Rights of the Child, 2012). A study of child protection workers in Manitoba revealed that only 7% knew most of the CRC's articles, and 48% reported that they knew nothing about the CRC (Stewart-Tufescu, Skaftfeld, Winther & Durrant, 2010)

Criterion 5 assessed whether social work authorities pay due regard to the desirability of continuity in the child's upbringing in relation to the child's ethnic, religious, cultural, or linguistic background when choosing or supporting a placement. Both Aboriginal and non-Aboriginal children scored 3, but this score does not reflect the challenges to implementation. Many jurisdictions recognize the importance of preserving kinship ties and cultural identity of Aboriginal children. For example, in British Columbia, the director of child protection is required to try to place Aboriginal children with extended family or within their communities when making placement decisions (Continuing Legal Education Society of British Columbia, 2007). However, due to the fact that many First Nation communities do not have the same health and social services available to other Canadians, many children will be placed outside their communities in order for these needs to be met (Assembly of First Nations, 2006). The shortage of Aboriginal foster parents in British Columbia also results in many Aboriginal children being placed with non-Aboriginal families (Continuing Legal Education Society of British Columbia, 2007). This shortage of Aboriginal foster parents is perpetuated by provincial child welfare standards that determine through the licensing process what is an appropriate foster home, for example, the number of bedrooms and windows. Due to economic inequalities, many Aboriginal foster parents will never be licensed to be foster parents because their homes do not meet the licensing standards set by government.

Therefore, Aboriginal families who may be very loving and appropriate foster families are denied a chance to foster children due to their economic situations.

Implementation of article 25. Article 25 calls for recognition of the right of a child placed for the purpose of care, protection or treatment of the child's physical or mental health to a periodic review of the treatment provided to the child and all other circumstances relevant to the placement. Three criteria were used to measure implementation of this article.

Criterion 1 assessed whether legal and/or formal administrative measures have been adopted to ensure the periodic review of each child who has been placed for the purpose of care and protection, including foster care, adoption, child-care institutions, boarding schools, and prisons and detention centres. Both Aboriginal and non-Aboriginal children obtained scores of 3. All child and family services agencies have rules and regulations that call for periodic review of each child in care.

Criterion 2 assessed whether the reviews are required to consider the treatment of the child (including all aspects of his or her care), placement of the child (including whether its continuation is necessary), and the views of the child (ascertained in private). Both Aboriginal and non-Aboriginal children obtained scores of 3. In Manitoba, for example, the director of each agency is required to conduct an annual review of the placement, care and treatment, and permanency plan for every child in agency care (Government of Manitoba, 2012).

Criterion 3 assessed whether reviews are carried out at sufficient intervals to secure the child's protection and welfare. Both Aboriginal and non-Aboriginal children obtained scores of 1. Although reviews are carried out as required by Child and Family Services Acts, they are sometimes not adequate due to heavy caseloads that prevent child welfare practitioners from getting to know their clients (Herbert, 2007). Consequently, children in care have poorer outcomes in the areas of health, education and general well-being compared

with children who are not in care (United Nations Committee on the Rights of the Child, 2012).

CHAPTER 5

Discussion

It is well-documented that, in Canada, Aboriginal children are at higher risk of commercial sexual exploitation than non-Aboriginal children. Three factors that predict children's risk are poverty, family violence, and coming into child welfare care, all of which are more likely among Aboriginal than non-Aboriginal children. The CRC, which Canada ratified in 1991, obligates governments to uphold children's rights to economic security, protection from violence, and high quality alternative care without discrimination. The fact that the risk factors for commercial sexual exploitation are more prevalent among Aboriginal than non-Aboriginal children suggests that the CRC is not being implemented equitably across these groups.

In this study, a policy analysis was conducted to examine whether the CRC is being implemented differentially for Aboriginal and non-Aboriginal children focusing on three policy areas: economic security, family violence and child welfare care. Implementation of the CRC articles relevant to each policy area was operationally defined and quantified for each group of children. This analysis revealed a surprising absence of government data on child well-being, a problem that is worsening with the termination of the National Longitudinal Survey of Children and Youth and the CIS. The findings raise important questions about the implementation of the CRC, as well as about the measurement of its implementation.

Implementation of Children's Rights to Economic Security in Canada

Article 27 of the CRC obligates governments to provide all children an adequate standard of living, without discrimination. None of the four criteria that were used to measure the implementation of this right were met for either Aboriginal or non-Aboriginal children. The promise by all Parliamentarians to eliminate poverty among Canadian children

by 2000 is far from a reality; one in seven children is still living in poverty (Statistics Canada, 2013). This rate is unacceptably high given Canada's high quality of living standards (Standing Committee on Human Resources, Skills and Social Development and the Status of Persons with Disabilities, 2010) and it belies Canada's high ranking based on the UN's Human Development Index, which names it as one of the world's best countries in which to live. The situation is worse in Manitoba, where one in three children live in poverty (Social Planning Council of Winnipeg, 2011). The equivalence on scores between Aboriginal and non-Aboriginal children, however, fails to capture inequalities in policies related to material assistance. When actual policies affecting the two groups were compared, it became clear that Aboriginal children in need were receiving even less material assistance than non-Aboriginal children in need. Numerous examples confirm that this is the case. First, in 2008 the Auditor General found that funding for child welfare services for Aboriginal children was 22% less than funding for similar services for non-Aboriginal children (Canadian Coalition for the Rights of Children, 2011; FNCFCS, 2013; United Nations Committee on the Rights of the Child, 2012; UNICEF Innocenti Research Centre & UNICEF Canada, 2009). Second, Aboriginal children have lower educational attainment overall than non-Aboriginal children due to higher drop-out rates (Wilson & McDonald, 2010). Funding for education in First Nations communities is much lower than it is for the rest of the population – a situation that is analogous to the inequality of funding to child welfare agencies. Third, a higher percentage of Aboriginal children live in overcrowded and substandard housing (Standing Committee on Human Resources, Skills and Social Development and the Status of Persons with Disabilities, 2010). Fourth, the federal government will not increase the budget for services to Aboriginal communities which remain capped at 2% annual growth despite the fact that the Aboriginal population is increasing (Campaign 2000, 2011). Fifth, Aboriginal children's nutrition is poorer due to the high cost and frequent unavailability of nutritious food on reserve (Standing

Committee on Human Resources, Skills and Social Development and the Status of Persons with Disabilities, 2010). These examples and many others provide evidence of the inequitable implementation of Article 27 of the CRC for Aboriginal and non-Aboriginal children in a situation where the implementation is already very low overall.

Implementation of Children`s Rights to Protection from Violence in Canada

Articles 19, 34 and 35 of the CRC obligate governments to protect children from all forms of violence and exploitation. Only one of the three criteria measuring implementation of Article 19 was fully met for both Aboriginal and non-Aboriginal children: measures are taken to identify and respond to sexual abuse within the family and in institutions. But Canadian legislation is inadequate to protect children from all forms of violence and appropriate measures have not been taken to prevent all forms of violence against children. Although federal, provincial and territorial laws prohibit many forms of violence, these laws are not comprehensive, do not extend to children fully and very few provincial child welfare laws have entrenched the principles of the CRC in their legislation, policies, regulations and standards. And although Canada`s Criminal Code protects children from various forms of sexual abuse and exploitation, it fails to protect children from all forms of physical and psychological violence, as exemplified by section 43 which authorizes corporal punishment of children. Moreover, there has been no law enforcement intervention to stop children from being trafficked between polygamous sects in British Columbia and Utah. As a result of these and other failures to comply with the CRC, family violence remains widespread in Canada despite the introduction of the Family Violence Prevention Program in 1998.

With regard to commercial sexual exploitation specifically (articles 34 and 35), Canada has not yet developed a national plan of action despite making commitments in Stockholm and Yokohama in 1996 and 2001, respectively. Definitions of unlawful sexual activity involving children are inadequate and the lack of a central agency to record and

report data on the sexual exploitation of children in Canada impedes the development of an accurate situational analysis. Despite Canada's ratification of the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography, there is no clear evidence that provinces and territories comply with it. Inconsistent interpretations of its provisions compromise the full protection of children from exploitation. Canada has not adopted legal and administrative measures to ensure that abducted children are located and returned as soon as possible; some forms of sale or trafficking of children have not been criminalized, including that perpetrated by parents; and although there are national data bases of missing children, there are none of known child-traffickers.

Although Aboriginal and non-Aboriginal children obtained equivalent scores on the measures of implementation of CRC articles guaranteeing the right to protection, further exploration of Canada's policies revealed inequities in program provision and accessibility of services. Due to intergenerational trauma and socio-economic disadvantages, Aboriginal children are at disproportionate risk of experiencing physical and sexual violence. However, services that are available for non-Aboriginal children are often not accessible to Aboriginal children, especially those in northern communities or living outside large cities. Recent funding cuts to social services have further reduced the much needed services for young people. Many cases of missing or murdered Aboriginal victims of the child sex trade remain unsolved allowing offenders to go unpunished.

Implementation of Children's Rights to Parental Care or High-Quality Alternative Care

Articles 18, 20 and 25 obligate the Canadian government to uphold children's rights to parental care, and if alternative care is necessary, to ensure that it is of high quality and subjected to regular review. Although all existing Canadian legislation across all provinces and territories recognizes the primacy of parents' responsibility for children's upbringing and

development, it does not make clear that the exercise of parental responsibility has the best interests of the child as its basic concern. The concept of “best interests of the child” is not applied as a general principle of law despite being mentioned in family, immigration and child welfare laws. Laws, administrative systems, tax and welfare measures, and public education do not guarantee both parents’ common responsibilities for and active participation in their children’s upbringing. While Canadian child custody laws give children the right to access to both parents, in reality contested cases reveal that sole maternal custody is usually awarded (Kruk, 2008). Policies impacting children and families are not effectively coordinated because there is no national family policy or child policy. Consequently, the required financial support, housing, appropriate child care equipment and respite care or advice and counselling provided to parents is inadequate to empower many of them to provide the level of care guaranteed under the CRC.

Removing children from their families has been the first option in cases of neglect, financial hardship and disability – and this is particularly true for Aboriginal families. Canada has legal obligation under both federal and provincial/territorial laws to provide appropriate care for children deprived of their family environments. Jurisdictions are increasingly recognizing the importance of preserving Aboriginal children’s kinship ties and cultural identities (British Columbia Ministry of Children and Family Development, 2012), but there is an urgent need to ensure that all social work professionals are trained to secure children’s rights under the CRC.

Child and Family Services Acts across Canadian provinces and territories guide the provision of services to children and families. They universally require that all placements undergo periodic reviews to secure the child’s protection and welfare. Sadly, such reviews are not carried out at sufficient intervals due to the heavy caseloads that most social work professionals carry. Further, Aboriginal Affairs and Northern Development Canada

(AANDC), the federal department responsible for First Nations peoples in Canada, requires agencies to provide this type of data but does not analyze it or produce reports based on it. This makes it virtually impossible to track the activities of First Nation CFS agencies. Aboriginal children obtained a lower score than non-Aboriginal children on this measure because services on-reserve have long lacked financial support for preventive family support and for family preservation programs for at-risk families. However, it is important to mention that most provinces have adopted a new strategy that provides funding to agencies under the “Early Intervention and Family Enhancement” strategy, which gives greater weight to prevention-based approaches to child welfare both on- and off-reserve. Off-reserve, this strategy is called “differential response.” It is changing the perspective of government officials about the importance of prevention and the diverse needs and strengths of families. Its aim is to provide an individualized approach for each family.

Strengths and Limitations of the Present Study

This study had a number of strengths. First, this study went beyond a quantitative comparison to explore qualitative aspects of policy that provide a more complete picture of the state of children’s rights in Canada. It became clear that checklists do not provide enough depth for analysis of social policy. In a number of cases, Aboriginal and non-Aboriginal children obtained identical scores on the measures, yet the implementation of the relevant policies differed substantially across the two populations. The findings made clear that equality is not the same thing as equity. Using the concepts of formal and substantive equality can help us better understand this. “Formal equality” refers to a situation in which determining whether a person has a right to social benefit or gain is not based on that person’s individual physical or personal characteristics, but on merit (Equal Rights Trust, 2007). The concept of “substantive equality” on the other hand recognizes that policies and practices put in place to address everyone’s needs, although appearing to be non-discriminatory, may not

suit specific needs of certain groups of people (Equal Opportunity Commission of Western Australia, 2010). Equal treatment can bring about inequality where the needs of some groups are much greater than the needs of other groups. In some situations, measures must be taken to correct past discrimination in order to equalize all groups' starting points (Equal Rights Trust, 2007). Therefore, this study provides direction for the development of measures that can more accurately capture the various dimensions of CRC implementation.

Second, Blackstock, Clarke, Cullen, D'Hondt and Formsma (2004) identified inadequacies in funding, policy and service provision that the Canadian government needed to address. This study further affirmed that these inadequacies are a result of failure to uphold children's rights to economic security, protection from violence and high quality alternative care. It is important to note that the First Nations Child & Family Caring Society and the Assembly of First Nations have filed a Human Rights complaint against the Canadian Government for providing less child welfare funding to First Nations children on reserve than other children in Canada (Blackstock, 2010). A positive decision in favour of the First Nations' organizations should lead to better financing of child welfare programs and improvements to children's safety and well-being in all areas including sexual exploitation.

The primary limitation of the present analysis is that official government documents that fully describe current Canadian policy are difficult to locate. As a result, I relied heavily on non-governmental documents. A second limitation is the challenge of drawing conclusions about Canada as a whole due to the dualist nature of the government system; for example, child welfare legislation, child protection systems and service delivery differ across provinces and territories. Therefore, some analyses of CRC implementation cannot be conducted at solely the federal level, and require individual analyses of 13 jurisdictions.

Directions for Future Research

The findings of this study demonstrate that numerical scores are not sufficient to capture inequities in policies affecting Aboriginal and non-Aboriginal children. While the indicators used in the present study were helpful to focus the analysis and operationalize "implementation", they did not fully capture the realities of the situation. Future research should aim to develop indicators that can "drill down" to the more subtle and complex realities behind the numbers. It also will be important to conduct these analyses by province/territory to obtain a more accurate picture of discriminatory implementation of the CRC. With regard to Aboriginal children specifically, it would be valuable to conduct an in-depth policy analysis in Canada's three provinces with the highest Aboriginal populations; namely, Manitoba, Saskatchewan and British Columbia.

Conclusion and Recommendations

Implementation of the CRC articles relating to three primary predictors of commercial sexual exploitation were met either partially or not at all. Child poverty continues to be a profound problem in Canada that is made even worse for Aboriginal children in-need, who receive less material assistance than non-Aboriginal children in-need. The first step required to secure all children's development is identifying the minimum standard of living and adopting an official measure of poverty that reflects the realities of families living in Aboriginal communities. This step should trigger an accurate analysis of children's living conditions, a national poverty reduction strategy, provision of adequate support, and a reduction in the number of Aboriginal children being removed from their families on the basis of neglect.

Canada also needs to develop a comprehensive national strategy to protect children from all forms of exploitation that recognizes the particular needs and circumstances of Aboriginal children. All provinces and territories should comply with the Optional Protocol

and ensure that its provisions are interpreted consistently across jurisdictions. In order to improve the coordination of policies impacting children and families, Canada should develop a national family policy and a national child policy. Finally, Canada must establish the office of a National Children's Commissioner, as called for by many children's advocates and the United Nations Committee on the Rights of the Child, with a mandate to hold the federal government accountable for the impact of its policies on the health, well-being, security and safety of all children. A positive decision on the Human Rights case in favour of the First Nations' organizations will be crucial to enhancing policies regulating economic security, protection from violence and child welfare care, and reducing the factors that place Aboriginal children at heightened risk for commercial sexual exploitation.

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Appendix A

United Nations Convention on the Rights of the Child

<http://www.ohchr.org/en/professionalinterest/pages/crc.aspx>

Convention on the Rights of the Child

**Adopted and opened for signature, ratification and accession by General Assembly resolution 44/25 of 20 November 1989
entry into force 2 September 1990, in accordance with article 49**

Preamble

The States Parties to the present Convention,

Considering that, in accordance with the principles proclaimed in the Charter of the United Nations, recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world,

Bearing in mind that the peoples of the United Nations have, in the Charter, reaffirmed their faith in fundamental human rights and in the dignity and worth of the human person, and have determined to promote social progress and better standards of life in larger freedom,

Recognizing that the United Nations has, in the Universal Declaration of Human Rights and in the International Covenants on Human Rights, proclaimed and agreed that everyone is entitled to all the rights and freedoms set forth therein, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status,

Recalling that, in the Universal Declaration of Human Rights, the United Nations has proclaimed that childhood is entitled to special care and assistance,

Convinced that the family, as the fundamental group of society and the natural environment for the growth and well-being of all its members and particularly children, should be afforded the necessary protection and assistance so that it can fully assume its responsibilities within the community,

Recognizing that the child, for the full and harmonious development of his or her personality, should grow up in a family environment, in an atmosphere of happiness, love and understanding,

Considering that the child should be fully prepared to live an individual life in society, and brought up in the spirit of the ideals proclaimed in the Charter of the United Nations, and in particular in the spirit of peace, dignity, tolerance, freedom, equality and solidarity,

Bearing in mind that the need to extend particular care to the child has been stated in the Geneva Declaration of the Rights of the Child of 1924 and in the Declaration of the Rights of the Child adopted by the General Assembly on 20 November 1959 and recognized in the

Universal Declaration of Human Rights, in the International Covenant on Civil and Political Rights (in particular in articles 23 and 24), in the International Covenant on Economic, Social and Cultural Rights (in particular in article 10) and in the statutes and relevant instruments of specialized agencies and international organizations concerned with the welfare of children,

Bearing in mind that, as indicated in the Declaration of the Rights of the Child, "the child, by reason of his physical and mental immaturity, needs special safeguards and care, including appropriate legal protection, before as well as after birth",

Recalling the provisions of the Declaration on Social and Legal Principles relating to the Protection and Welfare of Children, with Special Reference to Foster Placement and Adoption Nationally and Internationally; the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules); and the Declaration on the Protection of Women and Children in Emergency and Armed Conflict, Recognizing that, in all countries in the world, there are children living in exceptionally difficult conditions, and that such children need special consideration,

Taking due account of the importance of the traditions and cultural values of each people for the protection and harmonious development of the child, Recognizing the importance of international co-operation for improving the living conditions of children in every country, in particular in the developing countries,

Have agreed as follows:

PART I

Article 1

For the purposes of the present Convention, a child means every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier.

Article 2

1. States Parties shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child's or his or her parent's or legal guardian's race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status.

2. States Parties shall take all appropriate measures to ensure that the child is protected against all forms of discrimination or punishment on the basis of the status, activities, expressed opinions, or beliefs of the child's parents, legal guardians, or family members.

Article 3

1. In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.

2. States Parties undertake to ensure the child such protection and care as is necessary for his or her well-being, taking into account the rights and duties of his or her parents, legal guardians, or other individuals legally responsible for him or her, and, to this end, shall take all appropriate legislative and administrative measures.

3. States Parties shall ensure that the institutions, services and facilities responsible for the care or protection of children shall conform with the standards established by competent authorities, particularly in the areas of safety, health, in the number and suitability of their staff, as well as competent supervision.

Article 4

States Parties shall undertake all appropriate legislative, administrative, and other measures for the implementation of the rights recognized in the present Convention. With regard to economic, social and cultural rights, States Parties shall undertake such measures to the maximum extent of their available resources and, where needed, within the framework of international co-operation.

Article 5

States Parties shall respect the responsibilities, rights and duties of parents or, where applicable, the members of the extended family or community as provided for by local custom, legal guardians or other persons legally responsible for the child, to provide, in a manner consistent with the evolving capacities of the child, appropriate direction and guidance in the exercise by the child of the rights recognized in the present Convention.

Article 6

1. States Parties recognize that every child has the inherent right to life.
2. States Parties shall ensure to the maximum extent possible the survival and development of the child.

Article 7

1. The child shall be registered immediately after birth and shall have the right from birth to a name, the right to acquire a nationality and, as far as possible, the right to know and be cared for by his or her parents.
2. States Parties shall ensure the implementation of these rights in accordance with their national law and their obligations under the relevant international instruments in this field, in particular where the child would otherwise be stateless.

Article 8

1. States Parties undertake to respect the right of the child to preserve his or her identity, including nationality, name and family relations as recognized by law without unlawful interference.

2. Where a child is illegally deprived of some or all of the elements of his or her identity, States Parties shall provide appropriate assistance and protection, with a view to re-establishing speedily his or her identity.

Article 9

1. States Parties shall ensure that a child shall not be separated from his or her parents against their will, except when competent authorities subject to judicial review determine, in accordance with applicable law and procedures, that such separation is necessary for the best interests of the child. Such determination may be necessary in a particular case such as one involving abuse or neglect of the child by the parents, or one where the parents are living separately and a decision must be made as to the child's place of residence.

2. In any proceedings pursuant to paragraph 1 of the present article, all interested parties shall be given an opportunity to participate in the proceedings and make their views known.

3. States Parties shall respect the right of the child who is separated from one or both parents to maintain personal relations and direct contact with both parents on a regular basis, except if it is contrary to the child's best interests.

4. Where such separation results from any action initiated by a State Party, such as the detention, imprisonment, exile, deportation or death (including death arising from any cause while the person is in the custody of the State) of one or both parents or of the child, that State Party shall, upon request, provide the parents, the child or, if appropriate, another member of the family with the essential information concerning the whereabouts of the absent member(s) of the family unless the provision of the information would be detrimental to the well-being of the child. States Parties shall further ensure that the submission of such a request shall of itself entail no adverse consequences for the person(s) concerned.

Article 10

1. In accordance with the obligation of States Parties under article 9, paragraph 1, applications by a child or his or her parents to enter or leave a State Party for the purpose of family reunification shall be dealt with by States Parties in a positive, humane and expeditious manner. States Parties shall further ensure that the submission of such a request shall entail no adverse consequences for the applicants and for the members of their family.

2. A child whose parents reside in different States shall have the right to maintain on a regular basis, save in exceptional circumstances personal relations and direct contacts with both parents. Towards that end and in accordance with the obligation of States Parties under article 9, paragraph 1, States Parties shall respect the right of the child and his or her parents to leave any country, including their own, and to enter their own country. The right to leave any country shall be subject only to such restrictions as are prescribed by law and which are necessary to protect the national security, public order (*ordre public*), public health or morals or the rights and freedoms of others and are consistent with the other rights recognized in the present Convention.

Article 11

1. States Parties shall take measures to combat the illicit transfer and non-return of children abroad.
2. To this end, States Parties shall promote the conclusion of bilateral or multilateral agreements or accession to existing agreements.

Article 12

1. States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child.
2. For this purpose, the child shall in particular be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly, or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law.

Article 13

1. The child shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of the child's choice.
2. The exercise of this right may be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:
 - (a) For respect of the rights or reputations of others; or
 - (b) For the protection of national security or of public order (ordre public), or of public health or morals.

Article 14

1. States Parties shall respect the right of the child to freedom of thought, conscience and religion.
2. States Parties shall respect the rights and duties of the parents and, when applicable, legal guardians, to provide direction to the child in the exercise of his or her right in a manner consistent with the evolving capacities of the child.
3. Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health or morals, or the fundamental rights and freedoms of others.

Article 15

1. States Parties recognize the rights of the child to freedom of association and to freedom of peaceful assembly.

2. No restrictions may be placed on the exercise of these rights other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others.

Article 16

1. No child shall be subjected to arbitrary or unlawful interference with his or her privacy, family, or correspondence, nor to unlawful attacks on his or her honour and reputation.

2. The child has the right to the protection of the law against such interference or attacks.

Article 17

States Parties recognize the important function performed by the mass media and shall ensure that the child has access to information and material from a diversity of national and international sources, especially those aimed at the promotion of his or her social, spiritual and moral well-being and physical and mental health.

To this end, States Parties shall:

(a) Encourage the mass media to disseminate information and material of social and cultural benefit to the child and in accordance with the spirit of article 29;

(b) Encourage international co-operation in the production, exchange and dissemination of such information and material from a diversity of cultural, national and international sources;

(c) Encourage the production and dissemination of children's books;

(d) Encourage the mass media to have particular regard to the linguistic needs of the child who belongs to a minority group or who is indigenous;

(e) Encourage the development of appropriate guidelines for the protection of the child from information and material injurious to his or her well-being, bearing in mind the provisions of articles 13 and 18.

Article 18

1. States Parties shall use their best efforts to ensure recognition of the principle that both parents have common responsibilities for the upbringing and development of the child. Parents or, as the case may be, legal guardians, have the primary responsibility for the upbringing and development of the child. The best interests of the child will be their basic concern.

2. For the purpose of guaranteeing and promoting the rights set forth in the present Convention, States Parties shall render appropriate assistance to parents and legal guardians in the performance of their child-rearing responsibilities and shall ensure the development of institutions, facilities and services for the care of children.

3. States Parties shall take all appropriate measures to ensure that children of working parents have the right to benefit from child-care services and facilities for which they are eligible.

Article 19

1. States Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child.

2. Such protective measures should, as appropriate, include effective procedures for the establishment of social programmes to provide necessary support for the child and for those who have the care of the child, as well as for other forms of prevention and for identification, reporting, referral, investigation, treatment and follow-up of instances of child maltreatment described heretofore, and, as appropriate, for judicial involvement.

Article 20

1. A child temporarily or permanently deprived of his or her family environment, or in whose own best interests cannot be allowed to remain in that environment, shall be entitled to special protection and assistance provided by the State.

2. States Parties shall in accordance with their national laws ensure alternative care for such a child.

3. Such care could include, inter alia, foster placement, kafalah of Islamic law, adoption or if necessary placement in suitable institutions for the care of children. When considering solutions, due regard shall be paid to the desirability of continuity in a child's upbringing and to the child's ethnic, religious, cultural and linguistic background.

Article 21

States Parties that recognize and/or permit the system of adoption shall ensure that the best interests of the child shall be the paramount consideration and they shall:

(a) Ensure that the adoption of a child is authorized only by competent authorities who determine, in accordance with applicable law and procedures and on the basis of all pertinent and reliable information, that the adoption is permissible in view of the child's status concerning parents, relatives and legal guardians and that, if required, the persons concerned have given their informed consent to the adoption on the basis of such counselling as may be necessary;

(b) Recognize that inter-country adoption may be considered as an alternative means of child's care, if the child cannot be placed in a foster or an adoptive family or cannot in any suitable manner be cared for in the child's country of origin;

(c) Ensure that the child concerned by inter-country adoption enjoys safeguards and standards equivalent to those existing in the case of national adoption;

(d) Take all appropriate measures to ensure that, in inter-country adoption, the placement does not result in improper financial gain for those involved in it;

(e) Promote, where appropriate, the objectives of the present article by concluding bilateral or multilateral arrangements or agreements, and endeavour, within this framework, to ensure that the placement of the child in another country is carried out by competent authorities or organs.

Article 22

1. States Parties shall take appropriate measures to ensure that a child who is seeking refugee status or who is considered a refugee in accordance with applicable international or domestic law and procedures shall, whether unaccompanied or accompanied by his or her parents or by any other person, receive appropriate protection and humanitarian assistance in the enjoyment of applicable rights set forth in the present Convention and in other international human rights or humanitarian instruments to which the said States are Parties.

2. For this purpose, States Parties shall provide, as they consider appropriate, co-operation in any efforts by the United Nations and other competent intergovernmental organizations or non-governmental organizations co-operating with the United Nations to protect and assist such a child and to trace the parents or other members of the family of any refugee child in order to obtain information necessary for reunification with his or her family. In cases where no parents or other members of the family can be found, the child shall be accorded the same protection as any other child permanently or temporarily deprived of his or her family environment for any reason, as set forth in the present Convention.

Article 23

1. States Parties recognize that a mentally or physically disabled child should enjoy a full and decent life, in conditions which ensure dignity, promote self-reliance and facilitate the child's active participation in the community.

2. States Parties recognize the right of the disabled child to special care and shall encourage and ensure the extension, subject to available resources, to the eligible child and those responsible for his or her care, of assistance for which application is made and which is appropriate to the child's condition and to the circumstances of the parents or others caring for the child.

3. Recognizing the special needs of a disabled child, assistance extended in accordance with paragraph 2 of the present article shall be provided free of charge, whenever possible, taking into account the financial resources of the parents or others caring for the child, and shall be designed to ensure that the disabled child has effective access to and receives education, training, health care services, rehabilitation services, preparation for employment and recreation opportunities in a manner conducive to the child's achieving the fullest possible

social integration and individual development, including his or her cultural and spiritual development

4. States Parties shall promote, in the spirit of international cooperation, the exchange of appropriate information in the field of preventive health care and of medical, psychological and functional treatment of disabled children, including dissemination of and access to information concerning methods of rehabilitation, education and vocational services, with the aim of enabling States Parties to improve their capabilities and skills and to widen their experience in these areas. In this regard, particular account shall be taken of the needs of developing countries.

Article 24

1. States Parties recognize the right of the child to the enjoyment of the highest attainable standard of health and to facilities for the treatment of illness and rehabilitation of health. States Parties shall strive to ensure that no child is deprived of his or her right of access to such health care services.

2. States Parties shall pursue full implementation of this right and, in particular, shall take appropriate measures:

(a) To diminish infant and child mortality;

(b) To ensure the provision of necessary medical assistance and health care to all children with emphasis on the development of primary health care;

(c) To combat disease and malnutrition, including within the framework of primary health care, through, inter alia, the application of readily available technology and through the provision of adequate nutritious foods and clean drinking-water, taking into consideration the dangers and risks of environmental pollution;

(d) To ensure appropriate pre-natal and post-natal health care for mothers;

(e) To ensure that all segments of society, in particular parents and children, are informed, have access to education and are supported in the use of basic knowledge of child health and nutrition, the advantages of breastfeeding, hygiene and environmental sanitation and the prevention of accidents;

(f) To develop preventive health care, guidance for parents and family planning education and services.

3. States Parties shall take all effective and appropriate measures with a view to abolishing traditional practices prejudicial to the health of children.

4. States Parties undertake to promote and encourage international co-operation with a view to achieving progressively the full realization of the right recognized in the present article. In this regard, particular account shall be taken of the needs of developing countries.

Article 25

States Parties recognize the right of a child who has been placed by the competent authorities for the purposes of care, protection or treatment of his or her physical or mental health, to a periodic review of the treatment provided to the child and all other circumstances relevant to his or her placement.

Article 26

1. States Parties shall recognize for every child the right to benefit from social security, including social insurance, and shall take the necessary measures to achieve the full realization of this right in accordance with their national law.
2. The benefits should, where appropriate, be granted, taking into account the resources and the circumstances of the child and persons having responsibility for the maintenance of the child, as well as any other consideration relevant to an application for benefits made by or on behalf of the child.

Article 27

1. States Parties recognize the right of every child to a standard of living adequate for the child's physical, mental, spiritual, moral and social development.
2. The parent(s) or others responsible for the child have the primary responsibility to secure, within their abilities and financial capacities, the conditions of living necessary for the child's development.
3. States Parties, in accordance with national conditions and within their means, shall take appropriate measures to assist parents and others responsible for the child to implement this right and shall in case of need provide material assistance and support programmes, particularly with regard to nutrition, clothing and housing.
4. States Parties shall take all appropriate measures to secure the recovery of maintenance for the child from the parents or other persons having financial responsibility for the child, both within the State Party and from abroad. In particular, where the person having financial responsibility for the child lives in a State different from that of the child, States Parties shall promote the accession to international agreements or the conclusion of such agreements, as well as the making of other appropriate arrangements.

Article 28

1. States Parties recognize the right of the child to education, and with a view to achieving this right progressively and on the basis of equal opportunity, they shall, in particular:
 - (a) Make primary education compulsory and available free to all;
 - (b) Encourage the development of different forms of secondary education, including general and vocational education, make them available and accessible to every child, and take appropriate measures such as the introduction of free education and offering financial assistance in case of need;

(c) Make higher education accessible to all on the basis of capacity by every appropriate means;

(d) Make educational and vocational information and guidance available and accessible to all children;

(e) Take measures to encourage regular attendance at schools and the reduction of drop-out rates.

2. States Parties shall take all appropriate measures to ensure that school discipline is administered in a manner consistent with the child's human dignity and in conformity with the present Convention.

3. States Parties shall promote and encourage international cooperation in matters relating to education, in particular with a view to contributing to the elimination of ignorance and illiteracy throughout the world and facilitating access to scientific and technical knowledge and modern teaching methods. In this regard, particular account shall be taken of the needs of developing countries.

Article 29

1. States Parties agree that the education of the child shall be directed to:

(a) The development of the child's personality, talents and mental and physical abilities to their fullest potential;

(b) The development of respect for human rights and fundamental freedoms, and for the principles enshrined in the Charter of the United Nations;

(c) The development of respect for the child's parents, his or her own cultural identity, language and values, for the national values of the country in which the child is living, the country from which he or she may originate, and for civilizations different from his or her own;

(d) The preparation of the child for responsible life in a free society, in the spirit of understanding, peace, tolerance, equality of sexes, and friendship among all peoples, ethnic, national and religious groups and persons of indigenous origin;

(e) The development of respect for the natural environment.

2. No part of the present article or article 28 shall be construed so as to interfere with the liberty of individuals and bodies to establish and direct educational institutions, subject always to the observance of the principle set forth in paragraph 1 of the present article and to the requirements that the education given in such institutions shall conform to such minimum standards as may be laid down by the State.

Article 30

In those States in which ethnic, religious or linguistic minorities or persons of indigenous origin exist, a child belonging to such a minority or who is indigenous shall not be denied the right, in community with other members of his or her group, to enjoy his or her own culture, to profess and practise his or her own religion, or to use his or her own language.

Article 31

1. States Parties recognize the right of the child to rest and leisure, to engage in play and recreational activities appropriate to the age of the child and to participate freely in cultural life and the arts.
2. States Parties shall respect and promote the right of the child to participate fully in cultural and artistic life and shall encourage the provision of appropriate and equal opportunities for cultural, artistic, recreational and leisure activity.

Article 32

1. States Parties recognize the right of the child to be protected from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral or social development.
2. States Parties shall take legislative, administrative, social and educational measures to ensure the implementation of the present article. To this end, and having regard to the relevant provisions of other international instruments, States Parties shall in particular:
 - (a) Provide for a minimum age or minimum ages for admission to employment;
 - (b) Provide for appropriate regulation of the hours and conditions of employment;
 - (c) Provide for appropriate penalties or other sanctions to ensure the effective enforcement of the present article.

Article 33

States Parties shall take all appropriate measures, including legislative, administrative, social and educational measures, to protect children from the illicit use of narcotic drugs and psychotropic substances as defined in the relevant international treaties, and to prevent the use of children in the illicit production and trafficking of such substances.

Article 34

States Parties undertake to protect the child from all forms of sexual exploitation and sexual abuse. For these purposes, States Parties shall in particular take all appropriate national, bilateral and multilateral measures to prevent:

- (a) The inducement or coercion of a child to engage in any unlawful sexual activity;
- (b) The exploitative use of children in prostitution or other unlawful sexual practices;

(c) The exploitative use of children in pornographic performances and materials.

Article 35

States Parties shall take all appropriate national, bilateral and multilateral measures to prevent the abduction of, the sale of or traffic in children for any purpose or in any form.

Article 36

States Parties shall protect the child against all other forms of exploitation prejudicial to any aspects of the child's welfare.

Article 37

States Parties shall ensure that:

(a) No child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment. Neither capital punishment nor life imprisonment without possibility of release shall be imposed for offences committed by persons below eighteen years of age;

(b) No child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time;

(c) Every child deprived of liberty shall be treated with humanity and respect for the inherent dignity of the human person, and in a manner which takes into account the needs of persons of his or her age. In particular, every child deprived of liberty shall be separated from adults unless it is considered in the child's best interest not to do so and shall have the right to maintain contact with his or her family through correspondence and visits, save in exceptional circumstances;

(d) Every child deprived of his or her liberty shall have the right to prompt access to legal and other appropriate assistance, as well as the right to challenge the legality of the deprivation of his or her liberty before a court or other competent, independent and impartial authority, and to a prompt decision on any such action.

Article 38

1. States Parties undertake to respect and to ensure respect for rules of international humanitarian law applicable to them in armed conflicts which are relevant to the child.

2. States Parties shall take all feasible measures to ensure that persons who have not attained the age of fifteen years do not take a direct part in hostilities.

3. States Parties shall refrain from recruiting any person who has not attained the age of fifteen years into their armed forces. In recruiting among those persons who have attained the age of fifteen years but who have not attained the age of eighteen years, States Parties shall endeavour to give priority to those who are oldest.

4. In accordance with their obligations under international humanitarian law to protect the civilian population in armed conflicts, States Parties shall take all feasible measures to ensure protection and care of children who are affected by an armed conflict.

Article 39

States Parties shall take all appropriate measures to promote physical and psychological recovery and social reintegration of a child victim of: any form of neglect, exploitation, or abuse; torture or any other form of cruel, inhuman or degrading treatment or punishment; or armed conflicts. Such recovery and reintegration shall take place in an environment which fosters the health, self-respect and dignity of the child.

Article 40

1. States Parties recognize the right of every child alleged as, accused of, or recognized as having infringed the penal law to be treated in a manner consistent with the promotion of the child's sense of dignity and worth, which reinforces the child's respect for the human rights and fundamental freedoms of others and which takes into account the child's age and the desirability of promoting the child's reintegration and the child's assuming a constructive role in society.

2. To this end, and having regard to the relevant provisions of international instruments, States Parties shall, in particular, ensure that:

(a) No child shall be alleged as, be accused of, or recognized as having infringed the penal law by reason of acts or omissions that were not prohibited by national or international law at the time they were committed;

(b) Every child alleged as or accused of having infringed the penal law has at least the following guarantees:

(i) To be presumed innocent until proven guilty according to law;

(ii) To be informed promptly and directly of the charges against him or her, and, if appropriate, through his or her parents or legal guardians, and to have legal or other appropriate assistance in the preparation and presentation of his or her defence;

(iii) To have the matter determined without delay by a competent, independent and impartial authority or judicial body in a fair hearing according to law, in the presence of legal or other appropriate assistance and, unless it is considered not to be in the best interest of the child, in particular, taking into account his or her age or situation, his or her parents or legal guardians;

(iv) Not to be compelled to give testimony or to confess guilt; to examine or have examined adverse witnesses and to obtain the participation and examination of witnesses on his or her behalf under conditions of equality;

(v) If considered to have infringed the penal law, to have this decision and any measures imposed in consequence thereof reviewed by a higher competent, independent and impartial authority or judicial body according to law;

(vi) To have the free assistance of an interpreter if the child cannot understand or speak the language used;

(vii) To have his or her privacy fully respected at all stages of the proceedings.

3. States Parties shall seek to promote the establishment of laws, procedures, authorities and institutions specifically applicable to children alleged as, accused of, or recognized as having infringed the penal law, and, in particular:

(a) The establishment of a minimum age below which children shall be presumed not to have the capacity to infringe the penal law;

(b) Whenever appropriate and desirable, measures for dealing with such children without resorting to judicial proceedings, providing that human rights and legal safeguards are fully respected. 4. A variety of dispositions, such as care, guidance and supervision orders; counselling; probation; foster care; education and vocational training programmes and other alternatives to institutional care shall be available to ensure that children are dealt with in a manner appropriate to their well-being and proportionate both to their circumstances and the offence.

Article 41

Nothing in the present Convention shall affect any provisions which are more conducive to the realization of the rights of the child and which may be contained in:

(a) The law of a State party; or

(b) International law in force for that State.

PART II

Article 42

States Parties undertake to make the principles and provisions of the Convention widely known, by appropriate and active means, to adults and children alike.

Article 43

1. For the purpose of examining the progress made by States Parties in achieving the realization of the obligations undertaken in the present Convention, there shall be established a Committee on the Rights of the Child, which shall carry out the functions hereinafter provided.

2. The Committee shall consist of eighteen experts of high moral standing and recognized competence in the field covered by this Convention.^{1/} The members of the Committee shall be elected by States Parties from among their nationals and shall serve in their personal

capacity, consideration being given to equitable geographical distribution, as well as to the principal legal systems.

3. The members of the Committee shall be elected by secret ballot from a list of persons nominated by States Parties. Each State Party may nominate one person from among its own nationals.
4. The initial election to the Committee shall be held no later than six months after the date of the entry into force of the present Convention and thereafter every second year. At least four months before the date of each election, the Secretary-General of the United Nations shall address a letter to States Parties inviting them to submit their nominations within two months. The Secretary-General shall subsequently prepare a list in alphabetical order of all persons thus nominated, indicating States Parties which have nominated them, and shall submit it to the States Parties to the present Convention.
5. The elections shall be held at meetings of States Parties convened by the Secretary-General at United Nations Headquarters. At those meetings, for which two thirds of States Parties shall constitute a quorum, the persons elected to the Committee shall be those who obtain the largest number of votes and an absolute majority of the votes of the representatives of States Parties present and voting.
6. The members of the Committee shall be elected for a term of four years. They shall be eligible for re-election if renominated. The term of five of the members elected at the first election shall expire at the end of two years; immediately after the first election, the names of these five members shall be chosen by lot by the Chairman of the meeting.
7. If a member of the Committee dies or resigns or declares that for any other cause he or she can no longer perform the duties of the Committee, the State Party which nominated the member shall appoint another expert from among its nationals to serve for the remainder of the term, subject to the approval of the Committee.
8. The Committee shall establish its own rules of procedure.
9. The Committee shall elect its officers for a period of two years.
10. The meetings of the Committee shall normally be held at United Nations Headquarters or at any other convenient place as determined by the Committee. The Committee shall normally meet annually. The duration of the meetings of the Committee shall be determined, and reviewed, if necessary, by a meeting of the States Parties to the present Convention, subject to the approval of the General Assembly.
11. The Secretary-General of the United Nations shall provide the necessary staff and facilities for the effective performance of the functions of the Committee under the present Convention.
12. With the approval of the General Assembly, the members of the Committee established under the present Convention shall receive emoluments from United Nations resources on such terms and conditions as the Assembly may decide.

Article 44

1. States Parties undertake to submit to the Committee, through the Secretary-General of the United Nations, reports on the measures they have adopted which give effect to the rights recognized herein and on the progress made on the enjoyment of those rights

(a) Within two years of the entry into force of the Convention for the State Party concerned;

(b) Thereafter every five years.

2. Reports made under the present article shall indicate factors and difficulties, if any, affecting the degree of fulfilment of the obligations under the present Convention. Reports shall also contain sufficient information to provide the Committee with a comprehensive understanding of the implementation of the Convention in the country concerned.

3. A State Party which has submitted a comprehensive initial report to the Committee need not, in its subsequent reports submitted in accordance with paragraph 1 (b) of the present article, repeat basic information previously provided.

4. The Committee may request from States Parties further information relevant to the implementation of the Convention.

5. The Committee shall submit to the General Assembly, through the Economic and Social Council, every two years, reports on its activities.

6. States Parties shall make their reports widely available to the public in their own countries.

Article 45

In order to foster the effective implementation of the Convention and to encourage international co-operation in the field covered by the Convention:

(a) The specialized agencies, the United Nations Children's Fund, and other United Nations organs shall be entitled to be represented at the consideration of the implementation of such provisions of the present Convention as fall within the scope of their mandate. The Committee may invite the specialized agencies, the United Nations Children's Fund and other competent bodies as it may consider appropriate to provide expert advice on the implementation of the Convention in areas falling within the scope of their respective mandates. The Committee may invite the specialized agencies, the United Nations Children's Fund, and other United Nations organs to submit reports on the implementation of the Convention in areas falling within the scope of their activities;

(b) The Committee shall transmit, as it may consider appropriate, to the specialized agencies, the United Nations Children's Fund and other competent bodies, any reports from States Parties that contain a request, or indicate a need, for technical advice or assistance, along with the Committee's observations and suggestions, if any, on these requests or indications;

(c) The Committee may recommend to the General Assembly to request the Secretary-General to undertake on its behalf studies on specific issues relating to the rights of the child;

(d) The Committee may make suggestions and general recommendations based on information received pursuant to articles 44 and 45 of the present Convention. Such suggestions and general recommendations shall be transmitted to any State Party concerned and reported to the General Assembly, together with comments, if any, from States Parties.

PART III

Article 46

The present Convention shall be open for signature by all States.

Article 47

The present Convention is subject to ratification. Instruments of ratification shall be deposited with the Secretary-General of the United Nations.

Article 48

The present Convention shall remain open for accession by any State. The instruments of accession shall be deposited with the Secretary-General of the United Nations.

Article 49

1. The present Convention shall enter into force on the thirtieth day following the date of deposit with the Secretary-General of the United Nations of the twentieth instrument of ratification or accession.
2. For each State ratifying or acceding to the Convention after the deposit of the twentieth instrument of ratification or accession, the Convention shall enter into force on the thirtieth day after the deposit by such State of its instrument of ratification or accession.

Article 50

1. Any State Party may propose an amendment and file it with the Secretary-General of the United Nations. The Secretary-General shall thereupon communicate the proposed amendment to States Parties, with a request that they indicate whether they favour a conference of States Parties for the purpose of considering and voting upon the proposals. In the event that, within four months from the date of such communication, at least one third of the States Parties favour such a conference, the Secretary-General shall convene the conference under the auspices of the United Nations. Any amendment adopted by a majority of States Parties present and voting at the conference shall be submitted to the General Assembly for approval.
2. An amendment adopted in accordance with paragraph 1 of the present article shall enter into force when it has been approved by the General Assembly of the United Nations and accepted by a two-thirds majority of States Parties.

3. When an amendment enters into force, it shall be binding on those States Parties which have accepted it, other States Parties still being bound by the provisions of the present Convention and any earlier amendments which they have accepted.

Article 51

1. The Secretary-General of the United Nations shall receive and circulate to all States the text of reservations made by States at the time of ratification or accession.
2. A reservation incompatible with the object and purpose of the present Convention shall not be permitted.
3. Reservations may be withdrawn at any time by notification to that effect addressed to the Secretary-General of the United Nations, who shall then inform all States. Such notification shall take effect on the date on which it is received by the Secretary-General

Article 52

A State Party may denounce the present Convention by written notification to the Secretary-General of the United Nations. Denunciation becomes effective one year after the date of receipt of the notification by the Secretary-General.

Article 53

The Secretary-General of the United Nations is designated as the depositary of the present Convention.

Article 54

The original of the present Convention, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations. In witness thereof the undersigned plenipotentiaries, being duly authorized thereto by their respective Governments, have signed the present Convention.

1/ The General Assembly, in its resolution 50/155 of 21 December 1995, approved the amendment to article 43, paragraph 2, of the Convention on the Rights of the Child, replacing the word “ten” with the word “eighteen”. The amendment entered into force on 18 November 2002 when it had been accepted by a two-thirds majority of the States parties (128 out of 191).

Appendix B

Hodgkin, R., & Newell P. (2007). *Implementation handbook for the Convention on the Rights of the Child* (Rev. 3rd ed.). Geneva, Switzerland: United Nations Children's Fund.

http://www.unicef.org/publications/files/Implementation_Handbook_for_the_Convention_on_the_Rights_of_the_Child.pdf