

tion. When asked, the child indicated that she understood the necessity of telling the truth during her hearing and added that it was "not nice" to tell a lie. The CRDD found her evidence to be truthful.

23. The UNHCR document *Refugee Children—Guidelines on Protection and Care*, endnote 5 above, states that arrangements should be made "to have a trusted adult accompany the child during the interviewing process, either a family member of the child, a friend or an appointed independent person." (Page 102.)
24. As stated by the CRDD in T92-09383, Wolpert, Hunt, May 4, 1993, "[a] child might well not 'know' certain things: he is not privy to an adult's world."
25. See endnote 9.
26. With respect to the assessment of evidence of a child claimant, the CRDD panel in V92-00501, Burdett, Brisco, April, 1993, said as follows:

I agree that a claimant who is a child may have some difficulty recounting the events which have led him or her to flee their country. Often the child claimant's parents will not have shared distressing events with the claimant, with the intention of protecting the child. As a result, the child claimant, in testifying at his or her refugee hearing, may appear to be vague and uninformed about important events which have led up to acts of persecution. Before a trier of fact concludes that a child claimant is not credible, the child's sources of knowledge, his or her maturity, and intelligence must be assessed. The severity of the persecution alleged must be considered and whether past events have traumatized the child and hindered his or her ability to recount details.

27. The UNHCR document *Refugee Children—Guidelines on Protection and Care*, endnote 5 above, provides that where a child is not mature enough to establish a well-founded fear of persecution in the same way as an adult "it is necessary to examine in more detail objective factors, such as the characteristics of the group the child left with[,] the situation prevailing in the country of origin and the circumstances of family members, inside or outside the country of origin." (Page 100-1.) The same point is made in the UNHCR *Handbook on Procedures and Criteria for Determining Refugee Status* (Geneva, January 1979) which states in paragraph 217 that "it may be necessary to have a greater regard to certain objective factors."
28. *Yusuf v. M.E.I.* [1992] 1 F.C. 629, per Hugessen, J.A. □

The UN Committee on the Rights of the Child and Refugees: One NGO's Experience with the Reporting Process

Tom Clark

Abstract

During 1994 and 1995, the Inter-Church Committee for Refugees (ICCR) developed a brief to the UN Committee on the Rights of the Child. The brief was to assist the Committee in its examination of Canada's first report required under the Convention on the Rights of the Child. This article describes the brief, the process ICCR entered into, and the resulting "Report Card" from the UN Committee. Some follow-up work is described briefly.

Précis

Au cours des années 1994 et 1995, Le Comité Multiconfessionnel pour les Réfugiés (Inter-Church Committee for Refugees, abrégé en ICCR) a saisi le Comité des Nations-Unies pour les Droits de l'Enfant d'un rapport visant à lui prêter assistance dans son évaluation du premier compte-rendu déposé par le Canada en vertu de la Convention sur les droits de l'Enfant. Cet article présente le contenu de ce rapport d'ICCR, décrit la procédure dans laquelle ICCR fut impliqué, et fait état du contenu du "bulletin de santé" émis par le Comité des Nations Unies. Un certain nombre de démarches entreprises pour assurer le suivi de cet échange d'informations sont aussi brièvement décrites.

Introduction

The Convention on the Rights of the Child (CRC) was born in 1990 into a world of mounting evidence of hardship and abuse suffered by children. According to a 1990

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UN Fact Sheet, some 100 million children, abandoned by their families, subsisted by back breaking work, or turned to petty crime, prostitution or begging. Over 50 million children worked under unsafe or unhealthy conditions. About 120 million children between 6 and 11 year old did not get schooling. Some 3.5 million children died each year of preventable or curable diseases. Around 155 million children in developing countries lived in absolute poverty. Millions, including many in rich countries like Canada, were maltreated or neglected, were sexually exploited or became victims of drug abuse. Children of asylum seekers and refugees, and children who are themselves refugees or who are fleeing war, fall into this general context.

While the Canadian Coalition on Children's Rights (CCCR) reported the general conditions of children, ICCR was concerned about refugee claimants and refugees and about children as refugee claimants. There were enormous delays with family reunion for families of refugees who were in Canada and the impact which this had on children and the family as a whole were known to be serious. Often, one parent had to flee and the children were left behind to wait in a dangerous situation without at least one of the parents. There were instances of teenage children claiming refugee status who were put in prison for periods of several months under dubious accusations by immigration officials. In Canada, children were not considered or consulted about refugee claims or the consequences for them of denial of refugee status to a parent. There were Federal Court decisions such as the decision concerning Langner which

ruled that children of foreign parents had no interest in the deportation of their parents. All these situations seemed to be contradictions of the promises of the Convention of the Rights of the Child.

In what follows, we first look at the world of the Convention on the Rights of the Child, then at the ICCR Brief to the UN Committee on the Rights of the Child and the hearings. We examine the Report which the UN Committee produced. And finally, we look at the follow-up work and assessment of the experience.

I. Theory: A Convention and Committee on the Rights of the Child

The Convention on the Rights of the Child is special in several ways. It is the latest UN human rights treaty to enter into force. The CRC's rapid entry into force on September 2, 1990 came a mere seven months after the text was adopted by the UN General Assembly in November, 1989. This very short gap reflects enormous global interest and support for the Convention. While the first UN human rights treaties, the Covenant on Civil and Political Rights (CPR) and the Covenant on Economic, Social and Cultural Rights (CESCR) treat civil rights and social rights separately, the CRC encompasses both sets of rights for the child. It identifies the child as a human being, who is entitled to these rights independently of his or her family, and requests that states should translate them into law and practice.

Like the earlier UN human rights treaties, the CRC is a living treaty. Within it, States agree to report on their "progress in realizing the rights," "factors and difficulties," and agree to be examined by a Committee on the Rights of the Child—a Committee made up of independent experts elected by the States Parties for this purpose. The CRC allows specialized agencies of the UN, the UN Children's Fund and other UN organs to be "represented at the consideration of the implementation of such provisions ... as fall within ... their mandate." And the

Committee may invite "other competent bodies as it may consider appropriate to provide expert advice on the implementation." This provision includes non-governmental bodies. A Geneva based agency based with Defence of the Child International called "NGO Group for the Convention on the Rights of the Child" (NGO-Group) coordinates this non-governmental participation. This brings us to how it works.

The CRC Committee Examination Process

Every five years a government must submit a report. Non-governmental agencies like ICCR and the Canadian Coalition on Children's Rights (CCCR) may submit additional or complementary information and may participate in the process in at least three ways. First, briefs and documentation can be supplied for the CRC Committee to use. Second, the CRC Committee holds what are in effect preliminary fact finding hearings with expert agencies including non-governmental agencies about six months before it's scheduled hearing to discuss implementation with the government. Third, expert agencies can participate in the examination of the representatives of the government. ICCR and the CCCR participated in all three ways and each sent briefs or reports, expert representatives to the pre-hearings and expert representatives to the examination of the government.

Focus of the CRC Committee Examination

The Committee has established eight areas for examining government implementation of the Convention. As we review these categories here, it will be useful to link the international concern to some of the relevant refugee-related situations in Canada which ICCR raised. The examination categories are:

1. *General measures:* The twin obligations of almost all the UN human rights treaties are to ensure the rights and to provide a remedy if a right is violated. Ensure is a strong word requiring that

Canada must make certain that every individual in the territory can enjoy the rights by legislation and other measures. More than this, the obligation to ensure rights must be without discrimination on any ground. Several UN human rights treaty Committees and the CRC Committee expect a State like Canada to review its national law to make sure that law is in line with the provisions of the Convention. As we shall see, in the UN perspective, Canada's Federal-Provincial division of powers is not an acceptable reason for permitting wide variations in access to the rights promised in the Convention. Any federal government is accountable under international law for fulfilling treaty obligations across the entire federal territory.

2. *Definition of the child:* The Convention defines a child as 18 years and under.

3. *General Principles:* When courts, welfare institutions or any other Canadian administrative authority deal with children, the child's best interests must be given top priority (Article 3), and, the child's opinions must be carefully considered (Article 12). Children should not be separated from their parents unless appropriate authorities determine that separation is necessary for the child's well-being (Article 9). All children must be allowed to enjoy all the rights without discrimination and without regard for who their parent's are or their parent's status (Article 2). The work of the Immigration and Refugee Board and Immigration Officials must conform with these provisions.

4. *Civil Rights and political freedoms:* Several rights are relevant to refugee situations. In addition to the usual civil rights such as liberty (no detention) which relate to immigration detention of minors, the CRC provides for reunification of families by permitting travel into or out of their territories (Articles 9 and 10). Canada must ensure a child has a nationality (citizenship). Also, Canada must have explicit measures to protect a child from all forms of physical or mental violence, injury, abuse, neglect or negligent treatment,

maltreatment or exploitation including sexual abuse.

5. *The family environment and alternative care:* Both parents have primary responsibility for a child's upbringing, but Canada must provide them with appropriate assistance and develop child-care institutions (Article 18). Canada must provide parentless children with suitable alternate care (Article 20).

6. *Basic health and welfare:* The Convention calls for measures to diminish infant mortality, ensure medical assistance to all children and to promote children's health (Article 28). This has implications for health care for children of parents who are in some form of delayed deportation.

7. *Education, culture and leisure:* The child has a right to education at all levels. This, too, requires measures to ensure the child's right when the parents are in immigration proceedings (Article 29).

8. *Special protection measures:* The CRC Committee has singled out certain groups of children for special consideration. They include: refugee children (Article 22), disabled children (Article 23), children from armed conflict (Article 38) and minority or indigenous children (Article 30). For example, the child seeking refugee status (with or without parents) must enjoy CRC rights and Canada must try to trace missing parents (Article 22).

Result and Potential Significance of the Examination

Immediately after the examination, the Committee issues a brief Report. This Report follows a format established in 1992 for all the UN treaty bodies. The format includes: Introduction; Positive Factors (areas where the Committee is pleased with a state's progress); Principal subjects of concern (problem areas where improvement is needed); Suggestions and Recommendations from the Committee. From the non-governmental perspective, the UN process can allow a UN body to endorse a problem area identified by non-governmental groups and to suggest solutions. The UN body can also

provide non-governmental groups with new perspectives on problems by its own suggestions. The Report is published within the UN human rights system. As we shall see, the extent to which the Committee suggestions and recommendations matter will depend on further work by a non-governmental group.

UN treaty bodies like the CRC Committee are given power in the treaty to issue "General Comments" which in effect clarify particular aspects of the treaty as a consequence of general problems arising in State implementation. These General Comments form a jurisprudence which is a kind of case law. The extent to which the Report and General Comment affect law and practice in countries like Canada depends considerably on the use made of them by NGOs.

Given the difficulty and long time frame of international pressure any use of the UN treaty system must aim at particular issues which are at an impasse in local law and practice. An NGO must test the issue against the UN Convention. If the UN endorses the problem and suggests a solution, the NGO must then seek to promote the suggestion. That is the theory of ICCR's efforts with the UN treaty bodies and the CRC Committee. After a decade of largely fruitless domestic advocacy around serious rights-related problems with Canadian law and practice, which included a court action on behalf of refugees from 1989-1992, ICCR felt that tactics beyond Canada, itself, were called for.

II. ICCR Experience with the CRC Examination Process The Brief—Scope and Content

The ICCR brief was organized around the eight-category format described above and amounted to 14 pages plus a summary of recommendations and attachments. An introduction explained what ICCR was and reviewed its history and consequent competence to speak to refugee issues in Canada. The introduction also gave the focus of the brief: refugee claimants, refugees

and their families and other non-citizens in Canada.

The brief gave the annual numbers of asylum seekers and the number of deportations in the context of annual immigration and annual travellers visiting Canada. The primary legislation—the *Immigration Act and Regulations*, and the consequent immigration statuses which could affect children.

Under General Measures for Implementation, ICCR noted that neither the *Constitution Act* nor the *Immigration Act* included specific rights for children and that these rights were generally undeveloped in the current state of Canadian law. The brief cited court cases to prove this and made reference to individual cases submitted to the Inter-American Commission on Human Rights. The brief also pointed to problems with "leave" in judicial review of immigration decisions (court permission needed before one can be heard). The brief wanted a greater role for the Federal and Provincial human rights commissions in promoting the rights of children. This section led to four general recommendations which included asking the CRC Committee to ask for more information from Canada about a simple effective court remedy for protecting children's fundamental constitutional rights and asking Canada for its plans to incorporate CRC provisions into Canadian law.

Under the heading General Principles, the brief raised ICCR concerns about non-discrimination as it applies to children of parents with non-citizen status as compared with other children in access to health care and in situations of deportation. The lack of access to the Canadian Human Rights Commission as a right was also raised. The failure of officials and the courts to recognize the principle of "best interests of the child" in deportation decisions was noted. The brief also noted that the risk to life, survival and development of children should be considered in decisions to deport their parents from Canada as well as in decisions to resettle refugees from overseas to Canada

for protection by Canadian visa officials. In general, mechanisms needed to be put in place to make sure the views of the child were taken into account. This gave rise to the next seven more specific recommendations. They included inviting the CRC Committee to ask Canada to change the *Canadian Human Rights Act* and the *Immigration Act* to extend the protections of the CRC to all children without discrimination, particularly with respect to status.

In addition, the brief raised concerns about lack of reference in Canadian law to the protection against torture or cruel treatment as a consequence of expulsion for the child of non-citizen parents.

Under Family Environment and Alternative Care, ICCR raised concerns that Canadian law did not adequately acknowledge the impact of deportation on family life, or delays in family reunion or in selection for resettlement of refugee families from overseas. ICCR also questioned the adequacy of present measures to allow a child to visit a refugee parent in Canada as provided under the CRC. ICCR recommended asking Canada to simplify and accelerate family reunion procedures when a relationship critical to the development of a child in Canada is at issue and to amend the *Immigration Act* to include CRC provisions relating to family visits and family reunion (Articles 9 and 10).

ICCR raised expulsion concerns again under Basic Health and Welfare as an aspect of survival and development of the child in Canada associated with parents being expelled. There are also difficulties in accessing medical attention for children of parents in deportation proceedings.

The final and eighth category for CRC Reports is Special Protection Measures. In some ways, all of ICCR's brief had considered measures for refugee children. However, ICCR pointed out that the present lack of appeal on the merits from negative refugee status decisions put refugee children at risk. ICCR suggested encouraging Canada to implement the

proposals in the report "The Quality of Mercy" commissioned by then Minister of Immigration, Sergio Marchi from Susan Davis and Lorne Waldman. Their proposals call for independent decision makers to review impending deportations using clear objective criteria which draw on international human rights law.

In its conclusion, ICCR noted that many of the issues which it raised were general and not particular to Canada. ICCR therefore made a final recommendation asking the CRC Committee to issue a General Comment which further clarifies the application of CRC Articles into immigration situations involving non-citizens and their children.

Throughout the process, ICCR consulted with the NGO-Group, Geneva. When the Report was submitted to the NGO-Group for distribution, ICCR wrote to the CRC Committee that it would be willing to attend a hearing in Geneva if that would be helpful to the Committee. ICCR and the CCCR were invited to send representatives to a hearing before Committee members in Geneva. Since many concerns related to provisions in law and court decisions, it was felt crucial to make available an expert in these areas. CCCR sent Les Horne of Defence of the Child International and Jeffery Wilson, lawyer and author of a recent book on children's rights in Canada. ICCR sent Barbara Jackman, a well known immigration lawyer with Federal and Supreme Court experience.

The Hearing and Examination

The hearing allowed the Canadian NGO representatives a half day round table with Committee members in a room at the Palais des Nations in Geneva. The NGO experts took charts to quickly introduce committee members to the functioning of Canadian law. Committee members asked questions in a semi-formal environment of frank information exchange. All this was to allow the Committee to come to grips with problems of implementation in Canada and to frame formal questions to be sent to Canada. In this case, the

UN Committee invited Barbara Jackman to submit a fuller analysis of Canadian law and legal procedures affecting non-citizen children. This was sent to the Committee to further assist its preparation for the examination of Canada.

The examination of a government's report under a human rights treaty is in principle an open meeting held either at the Palais des Nations in Geneva or the UN complex in New York. The record is also made public as a "Summary Record" of the appropriate Committee and is published as a UN document which includes the letters of the treaty, the letters "SR" for summary record, the Committee session number and the date. For example CRC/C/SR. 57 July 25, 1993 will give you the minutes of the examination of Sweden by the CRC Committee. A typical examination can take about three sessions of about three hours each spanning one and a half days. The government has been given initial questions on the report prior to the session. The examination begins with a general introduction to the report from the government and addresses some of the issues identified by the committee.

Canada takes the process quite seriously sending a delegation of three or more from Ottawa. An official from Foreign Affairs usually leads the delegation and often someone from the Federal Department of Justice (legal division) will be there to answer legal questions. After the government introduction and responses to initial issues, Committee members will ask further questions or probe the government by suggesting possible actions. The CRC Committee then works through its range of issues. The matter of refugee children is part of the CRC and the issue of equal legal rights for non-citizens often arises before UN treaty committees as it did during the particular session ICCR attended. The NGO-Group, Geneva, helped the Canadian NGO-representatives from ICCR and the CCCR around the meeting. They were able to sit in the sessions and provide notes to Committee

members to clarify government answers and to provoke further questioning. According to the ICCR representative, Canada delayed answering the CRC Committee questions related to immigration apparently in the hope that the time for the process would run out. However, this seemed to have the effect of strengthening the CRC Committee's interest. In the end, Canada had to address the immigration issues.

The Result—the UN Report with

Suggestions and Recommendations

The CRC Committee issued its report on the Rights of the Child in Canada in Geneva on June 9, 1995, about ten days after its examination of Canada. Of course, the Committee found some positive things to say about Canada's progress. Yet despite the explanations and answers of Canadian officials, the Committee used some of its strongest language to date when discussing immigration and children under the heading Principle Subjects of Concern. For example, consider paragraph 13 of the Report:

The Committee recognizes the efforts made by Canada for many years in accepting a large number of refugees and immigrants. Nevertheless, the Committee regrets that the principles of non-discrimination, of best interests of the child, and of the respect for the views of the child have not always been given adequate weight by administrative bodies dealing with the situation of refugees or immigrant children. It is particularly worried by the resort by immigration officials to measures of deprivation of liberty of children for security or other related purposes and by the insufficient measures aimed at family reunification with a view to ensure that it is dealt with in a positive, humane and expeditious manner. The Committee specifically regrets the delays in dealing with reunification of the family in cases where one or more members of the family have been considered eligible for refugee status in Canada as well as cases where refugee or immigrant children born in Canada may be

separated from their parents facing a deportation order.

Such statements of concern by an international body vindicate and provide moral support for the work of non-governmental groups like ICCR.

The recommendations as a whole can be summarized as follows:

1. Canada should consider withdrawing its CRC treaty reservations;
2. Canada should hold a nation-wide public education campaign on the CRC. Canada should integrate the CRC into the training of judges, lawyers, immigration officers (as ICCR suggested) and peace-keepers and teachers;
3. Canada should strengthen coordination of legal and administrative mechanisms to reduce risk of regional disparity and ensure the CRC is implemented in all parts of the territory. The Committee recommends strengthening federal monitoring mechanisms such as the Committee of Officials on Human Rights. Cooperation between authorities and NGOs should be strengthened;
4. Canada is encouraged to ensure full implementation of CRC Article 4 (to implement all available measures, legislative and other) taking into account the best interest of the child, maximum available resources to economic social and cultural rights, and steps to tackle child poverty;
5. Since the CRC can only be used in court to interpret Canadian law, Canada should take further steps to implement the CRC at the federal level especially to ensure that the CRC general principles like non-discrimination, acting in the best interests of the child, and hearing the views of the child in proceedings, are reflected in Canadian law (consistent with ICCR's suggestions);
6. Canada should in particular implement CRC Article 22 (refugee children) and the CRC general principles in all matters relating to the protection of refugees and immigrants children, including de-

portation proceedings. Any feasible measures should be taken to facilitate and speed up family reunification where one family member has been considered eligible for refugee status. Canada should seek to avoid expulsions causing the separation of families. Treatment of unaccompanied children and children refused refugee status and awaiting deportation should be in the light of CRC provisions. Children should be detained for security or other purposes only as a last resort as in CRC Article 37.b. (reflecting ICCR's information and suggestions);

7. Canada should review legislation permitting corporal punishment of children by parents and in schools or institutions with a view to banning physical punishment in light of CRC Article 3, 19. Canada should introduce new legislation, follow up and education to prevent family violence and physical punishment in the family;
8. Canada should provide positive measures to ensure vulnerable groups like aboriginal children get access to education and housing. Canada should research infant mortality and suicide among children in aboriginal communities;
9. Canada should make its report, the Summary Record and the CRC Committee Report widely available to the public at large.

The extent to which these recommendations reflect ICCR's own suggestions is striking and gratifying.

Follow up Work

ICCR's efforts to interest major Canadian news media in the report met with little response. However, thanks to the authority of UNICEF, which has a Canadian base, there was some limited coverage of the Report.

ICCR and the Canadian Council of Churches have written letters to the several federal ministers responsible and to several relevant parliamentary committees. After an initial round of denials, the Minister of Citizenship and Immigration and the Minister of

Justice have told ICCR that the proposals are under consideration. ICCR's correspondence with the Canadian Human Rights Commission bore fruit—the Commission's annual report for 1995 includes a short summary of the CRC examination and its results. ICCR has also produced a booklet on the issue of putting treaty provisions into Canadian law. A popular edition is underway for use during 1997, which will be a Year in Solidarity with Uprooted People.

The CCCR has been active too. Since June 1995, the Coalition has linked to ICCR and has developed the beginnings of a formal major project through which NGOs and governments can monitor implementation of the CRC across Canada, as recommended by the CRC Committee. Although this ambitious project will emphasize measurement of progress alone, there can be no doubt that it will facilitate further efforts to implement the CRC which stands to benefit not just refugees and immigrants, but all children and all families in Canada.

Conclusion

The use of an international treaty committee to advance the cause of refugees and immigrants can be a tool for change. ICCR's efforts to test its concerns with a UN Committee of international experts were rewarding. The concerns which ICCR had raised on behalf of refugees and immigrants were taken seriously by the CRC Committee. ICCR's suggestions were reflected in the CRC Committee's own recommendations to Canada. Yet as suggested above, the UN work now falls back into the hands of NGOs for follow up work.

It is hard thoughtful work and it is slow. It is not a substitute for advocacy work within a country like Canada. But it can bring a sense of international solidarity, a new impetus, a new commitment and new hope for success in the long term to advocacy work for rights in Canada. After several discouraging years for NGOs working with refugees and immigrants, even a little hope is worth having. ■

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