



REPRESENTATIVE FOR
CHILDREN AND YOUTH

Making Human Rights Relevant to Children

Prepared for:
International Summer Course on the Rights of the Child
Moncton, NB

August 2012

Mary Ellen Turpel-Lafond
Representative for Children and Youth
Province of British Columbia



Table of Contents

1. Introduction.....	3
2. Defining children's human rights	4
3. International human rights law: relevance to children	6
3.1 Treaties.....	7
3.1.1 United Nations	7
3.1.2 International Labour Organization.....	9
3.2 Customary international law	10
3.3 Regional human rights instruments.....	10
3.4 International humanitarian law.....	12
3.5 Domestic context and international human rights law.....	13
4. When human rights are not relevant.....	14
5. Making human rights 'real' in children's everyday worlds	17
5.1 Concepts of children	17
5.2 Children's participation	19
5.3 Research	23
5.4 Education	25
5.5 Human rights approaches.....	29
5.6 Implementation and monitoring.....	31
5.7 Redress and reconciliation.....	34
5.8 National human rights organizations.....	38
6. Conclusion	41
References	42
Judgments	46

1. Introduction

We are united by our struggle to make the world a better place for all.
(Children's Forum Message, 2002¹)

This paper examines how human rights can be made relevant, or 'real', for children² in their everyday worlds. It draws attention to challenges in defining children's human rights, determining what rights are relevant to children, and the complexity of international human rights law as the legal source for children's human rights. While the existence of international human rights law has contributed to some children in some places realizing their human rights, there is overwhelming evidence that vast numbers of children throughout the international community are subjected to human rights violations on a daily basis. This dire situation for many children, therefore, requires continuous evaluation about how human rights can be made 'real' to children in ways that are meaningful and truly experienced by them in their daily lives.

All children, including the most vulnerable and marginalized, have moral and legal entitlements to the full realization of their human rights, including those rights articulated within international human rights law. This paper begins from the standpoint of children, who stand as expert knowers of their own experiences located within the multifarious intersections of social, generational and institutional relations. It draws attention to approaches necessary to facilitate the implementation of international human rights law in children's lives - approaches which may not be possible for children to initiate on their own and yet which are vital to how children experience their human rights within their communities.

Governments, as duty bearers, have a particular responsibility to ensure that people are able to enjoy their rights. The human rights claim by an individual or community implies an obligation on the part of the wider society, usually through government, to guarantee the right in question. Governments today, if they wish to have credibility, have to ensure a framework of law and have to provide services that together enable all their citizens to enjoy a life in which their rights are observed. Whether or not governments actually do this, it is generally accepted that this is the government's responsibility and citizens can call them to account if they fail to ensure rights. (Office of the High Commissioner for Human Rights ('OHCHR'), 2012)

¹ Children's Forum Message. *A World Fit for Us*. Message drafted, debated, and agreed by the 400 Delegates of the Children's Forum, part of the United Nations Special Session on Children, 8-10 May 2002. Delivered by children to the General Assembly of the United Nations on Wednesday, 8 May 2002.

² The paper adopts the *UN Convention on the Rights of the Child* definition of children as all persons under 18 years of age.



This paper argues that to make human rights relevant for children, international human rights law needs to define children's human rights and to determine what human rights are important to children's lives. At the same time, this legal (and service) agenda needs to be supported by coordinated, broad-based approaches that contribute to facilitating human rights implementation and that can be used to structure analyses evaluating how children experience their human rights. Notably, each approach must embed children's participatory rights so as to facilitate and build children's capacity to claim their rights, recognize the rights of others, and seek remedies for rights violations. These approaches, coordinated through national children's strategies for human rights implementation and set within a framework of international human rights law, have the potential to make human rights 'real' for children entitled to live in a world that is a 'better place for all.'

2. Defining children's human rights

We want a world fit for children, because a world fit for us is a world fit for everyone. (Children's Forum Message, 2002)

How children's human rights are defined has direct implications for children and adults. The definition of children's human rights, for example, is intertwined with what human rights are considered relevant to children and their circumstances, children's claims, identification of duty bearers³ and, ultimately, what constitutes human rights violations in children's lives. This definition has particular significance for vulnerable and marginalized children, who may be among those individuals with the least access to information about their rights and who may be among the least able to make claims or complaints about possible breaches.

It can be challenging to define children's human rights. Reaching consensus within domestic and international contexts may invite disagreements about how human rights are defined, which human rights are important, and whether a particular moral or legal right is a human right. Understandings about what constitutes 'human rights' may have many interpretations and constantly evolve.

Human rights are rights inherent to all human beings, whatever our nationality, place of residence, sex, national or ethnic origin, colour, religion, language, or any other status. We are all equally entitled to our human rights without discrimination. These rights are all interrelated, interdependent and indivisible. (OHCHR, 2012).

³ Children and other individuals are rights holders. Duty-bearers have obligations under the UNCRC and other international human rights instruments. As the primary duty bearer, the State may delegate some of its responsibilities to others (such as public services providers). The international community, parents and others providing services to children are 'secondary' duty-bearers, with specific responsibilities towards children. Others with responsibilities for children may have moral duties rather than legal duties.

While this generalized definition underpins the basis upon which international human rights law is formulated, identifying specific elements that constitute children's human rights is a complex undertaking. For that reason, the *UN Convention on the Rights of the Child* ('UNCRC'), the overarching framework for children's human rights within international human rights law, can be relied upon to frame understandings about children's human rights. As the UNCRC itself points out, however, it is also essential to recognize its association with other international human rights instruments, particularly for those children in vulnerable and specialized circumstances.

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... (UNCRC preamble)

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. (UNCRC preamble)

The UNCRC draws attention to international human rights law that may be applicable for children 'living in exceptionally difficult conditions' and the potential relationship between domestic and international law that may impact those conditions.

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. (UNCRC, article 14.1).

There has been debate over the years about whether certain rights, such as UNCRC protection, participation or provision rights, are more relevant than others. States and their political ideologies may influence priorities with some States emphasizing economic, social and cultural rights and other States focusing upon civil and political rights. Over the last decade, however, United Nations ('UN') members have reached broad agreement that human rights are universal, indivisible, interdependent and interrelated. All human rights are equally important and necessary for building a strong and healthy society. States are obliged to protect human rights - economic, social, cultural, civil and political – and to take positive measure to prevent human rights abuses.

To ensure that human rights become 'real' in children's lives, adopting a broad definition of children's human rights informed by international human rights law is essential yet complex. Taking a well-informed approach, however, makes it possible for children (and their advocates) to make the fullest claims while identifying and making accountable those duty bearers with responsibilities in localized situations closest to children.

3. International human rights law: relevance to children

We are the children of the world, and despite our different backgrounds, we share a common reality. (Children's Forum Message, 2002)

International human rights law, together with domestic and regional law, provides the legal source for children's human rights (although these sources are not always compatible). This section draws attention to the complexity of international human rights law, making its implementation in children's lives a challenging yet obligatory undertaking for duty bearers.⁴ Acknowledging these challenges, however, is a critical first step to examining how human rights can be made relevant to children, particularly marginalized and less visible children who lack voice and representation.

A series of international human rights treaties and other instruments adopted since 1945 have conferred legal form on inherent human rights and developed the body of international human rights law. The four recognized sources of international law are international conventions or agreements, custom, general principles of law within major international legal systems, and 'the judicial decisions and teachings of distinguished writers' (Trebilcock & Howse, 2005, p. 580).⁵

⁴ For the sake of brevity, this section focuses on the primary components of international human rights law and does not examine legal principles or judicial decisions and teachings that may contribute to a wider body of knowledge about the field.

⁵ See Article 38, Statute of the International Court of Justice listing sources of international law.

Where human rights are located within sources of international law determines their status although most human rights norms are codified in human rights treaties and found in customary international law (Trebilcock & Howse, 2005).

International human rights law lays down obligations which States are bound to respect. By becoming parties to international treaties, States assume obligations and duties under international law to respect, to protect and to fulfil human rights. The obligation to respect means that States must refrain from interfering with or curtailing the enjoyment of human rights. The obligation to protect requires States to protect individuals and groups against human rights abuses. The obligation to fulfil means that States must take positive action to facilitate the enjoyment of basic human rights. (OHCHR, 2012b)

Learning about and understanding international human rights law has implications for how children's human rights are defined, what human rights may be relevant to children in particular contexts, how human rights education is taught, and how human rights violations are prevented, identified and remedied. By establishing international standards and benchmarks, international human rights law, while seemingly distant from children's everyday worlds, makes duty bearers apparent and accountable for how children are treated and how they experience their lives. In other words, understandings about international human rights law has implications for how human rights are made 'real' for children (see section 6).

3.1 Treaties

Treaties within international human rights law are agreements, which are enforceable upon States signing and ratification. These treaties, which may be called conventions, statutes or protocols, create legal obligations for States and govern relationships among them. While these obligations must be respected and acted upon, there is no enforceable, associated legal mechanism that requires States to be compliant within their own jurisdictions. Within the UN system, however, the UN Human Rights Council⁶ can exert pressure on States to respect their human rights obligations, supported by the main UN treaty bodies.⁷

3.1.1 United Nations

The UN is an organization '...committed to maintaining international peace and

⁶ The UN Human Rights Council, an inter-governmental body within the United Nations system, consists of 47 States responsible for the promotion and protection of all human rights around the world.

⁷ Available at: www.un.org



security, developing friendly relations among nations and promoting social progress, better living standards and human rights.⁸ The *UN Declaration of Human Rights (1948)* ('Declaration') is a core UN human rights treaty reflecting fundamental human rights principles agreed upon by States and applicable to all individuals, including children.⁹ These universally accepted human rights principles include the right to: freedom of expression, equality, non-discrimination, life, freedom from torture, cruel and inhuman treatment, a fair trial, free speech, freedom of religion, health, education and an adequate standard of living. These principles also include the right for all individuals to be treated with respect and dignity.

Since the Declaration, international human rights law has '...elaborated upon and expanded these rights, thus making international human rights a large and complicated field' (OHCHR, 2012). Fundamental human rights, embedded in UN human rights treaties and other human rights instruments, are grouped as civil and political rights (i.e. freedom of speech and freedom from torture) and economic, cultural and social rights (i.e. health and education). There are individual rights, such as those granted to individuals to ensure a fair trial, and collective rights, such as the right to food security or to native lands.

There are nine core UN treaties, which include the UNCRC and its Optional Protocols. There are also human rights instruments that may support articles within these and other treaties, such as instruments for children in special circumstances, in foster care and adoption (including inter-country adoptions), and who lack appropriate parental care. There are human rights treaties granting special considerations to children, for groups that include children (such as persons with disabilities, indigenous peoples and refugees), and for groups in damaging circumstances such as civil conflict, discriminatory environments, and where genocide has occurred.

To enforce compliance with certain UN treaties and their Optional Protocols, there is a UN treaty monitoring and reporting system together with enforcement and redress mechanisms, such as courts, commissions and complaints procedures. The UN Committee on the Rights of the Child ('UN Committee') monitors the UNCRC through its obligatory State reporting while other UN monitoring bodies, such as the Committee on the Elimination of Discrimination Against Women and the Committee on the Elimination of Racial Discrimination also monitor compliance, making specific references to children when relevant (OHCHR, 2012). These committees may issue General Comments as guidance for States required to implement treaties within their jurisdictions.¹⁰

⁸ For additional information see: www.un.org

⁹ Available at: www.un.org

¹⁰ See the UN Committee on the Rights of the Child General Comments. Available at: <http://www2.ohchr.org/english/bodies/crc/comments.htm>.

Some UN reporting processes, such as the UNCRC procedure, permit alternative reports by 'experts' and non-government organizations. In 2011, the Canadian Council of Child and Youth Advocates ('CCCYA') submitted their special report on Aboriginal children to the UN Committee¹¹ along with other child advocacy organizations. The CCCYA special report highlighted concerns about existing human rights violations that Aboriginal and other vulnerable children, such as refugee and immigrant children, are experiencing in Canada. In 2012, approximately 30 Aboriginal groups and other organizations submitted alternative reports to the UN Committee on the Elimination of Racial Discrimination. These reports highlighted the issue of discrimination toward Aboriginal peoples, including children, which was also an issue highlighted in the CCCYA special report and other child advocacy alternative reports to the UN Committee.

UN Special Rapporteurs, such as those responsible for UNCRC and other UN human rights instruments, may address matters relevant to children's lives in their reports on topics such as food security, indigenous peoples and migrants. UN Special Rapporteur on the Right to Food, for example, expressed concern in his end of mission¹² statement about access to food for Inuit peoples, including children, in Canada's northern communities. The UN Special Rapporteur on the rights of indigenous peoples and the UN Special Rapporteur on the human rights of migrants have also made reference to matters affecting children in Canada.¹³

The UN has sent representatives, such as Special Rapporteurs, to Canada under a 'country visit by special procedures' mechanism. In addition to the issues referred to above, these representatives have examined other issues affecting children, such as issues relating to minorities, adequate housing (as it relates to the right to an adequate standard of living), arbitrary detention, and 'contemporary form of racism, racial discrimination, xenophobia and related intolerance.'¹⁴

3.1.2 International Labour Organization

The International Labour Organization (ILO) exists as a UN agency developing international labour standards and employment issues.¹⁵ The ILO *Minimum Age for Admission to Employment* (1973), supported by the UN Committee as an appropriate standard, contains principles related to a minimum age for

¹¹ Available at: <http://www.rcybc.ca/content/home.asp>

¹² Available

at: <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=12159&LangID=E>

¹³ Available at: <http://unsr.jamesanaya.org/>

¹⁴ Reports available at: <http://www.ohchr.org/EN/countries/ENACARRegion/Pages/CAIndex.aspx>

¹⁵ For more information see: <http://www.ilo.org>



employment. The ILO *Convention Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour* (1999) addresses several matters relevant to children: child labour, slavery, sale and debt bondage, forced labour, recruitment for armed forces, prostitution, trafficking or other illicit activities, or other work which harms the health, safety or morals of children. It also prohibits payment below minimum wage, peonage, poor working conditions (i.e. dangerous conditions and unreasonable hours), and working conditions that cause fear (International Labour Office, 2009).

3.2 Customary international law

Customary international law - written or unwritten rules that contribute to international law - is binding upon all States, including States that have not signed and ratified treaties. This law exists when States, acting consistently in their international and internal relations over time, accept those actions as applicable law.

Although [human rights] instruments differ from each other by title, they all have common features and international law has applied basically the same rules to all of these instruments. These rules are the result of long practice among the States, which have accepted them as binding norms in their mutual relations. Therefore, they are regarded as international customary law (UN Treaty Collection, 2012).

Customary international law and legal principles have relevance to individual and groups of children. Under customary international law, for example, the use of child soldiers is prohibited, children in detention must be held in places separate from adults, and children must be protected from torture, racial discrimination and other injustices.

3.3 Regional human rights instruments

Throughout the world, there are regional human rights instruments in the Americas, Africa, Asia and Europe that may inform children's human rights in those areas. Analogous to the UN system, there are monitoring, enforcement and redress mechanisms (such as courts and commissions) that exist to promote compliance with the regional instruments and to provide individuals with an opportunity to claim human rights violations.

Regional human rights instruments may contribute to an understanding about human rights and encourage human rights obligations being met within particular contexts. The legal status varies among these instruments, consisting of declarations, principles, guidelines, standards and rules, although most have no binding legal effect unless States ratify or accede to instruments such as covenants, statutes, protocols and conventions. They can, however, have a moral effect and provide guidance to States about their obligations.

In the *Americas*, the Inter-American Commission on Human Rights and the Inter-American Court of Human Rights, managed by the Organization of American States, have responsibility for the *American Declaration on the Rights and Duties of Man* (1948), the legally binding *American Convention on Human Rights* and its Optional Protocols (OHCHR, 2012). The *American Convention on Human Rights*, which has not been ratified by Canada or the United States, makes particular reference to children in article 19, which states: '[e]very minor child has the right to the measures of protection required by his condition as a minor on the part of his family, society, and the state.'¹⁶

In *Africa*, a regional human rights instrument giving special considerations to children includes the *African Charter on the Rights and Welfare of the Child*, which makes reference to the UNCRC in its preamble.¹⁷ An African Committee of Experts on the Rights and Welfare of the Child receives government reports as well as communications from individuals, groups or non-governmental organizations recognized by the African Union, a member state or the United Nations. The *African Charter on Human and Peoples' Rights* (the Banjul Charter) is another human rights instrument intended to promote and protect human rights in the African continent.¹⁸

In *Asia*, the 10 nation-state Association of South-east Asian Nations (ASEAN) has established a regional human rights system for South-East Asia. In 2007, State leaders signed an ASEAN Charter, entered into force in 2008 following ratification by all 10 member states.¹⁹ The Charter gives ASEAN a legal basis, establishes an institutional framework and proscribes rules of procedure. In 2009, the ASEAN Intergovernmental Commission on Human Rights emerged during the 15th ASEAN Summit. In 2010, the ASEAN Commission for the Promotion and Protection of the Rights of Women and Children (ACWC) was also established.

In *Europe*, the regional arrangements for protecting human rights are extensive, involving the Council of Europe, the European Union and the Organization for Security and Cooperation in Europe. Each of these intergovernmental organizations has its own regional human rights mechanisms and instruments. The Council of Europe is responsible for the *Convention for the Protection of Human Rights and Fundamental Freedoms* and the *European Social Charter*, with enforcement mechanisms existing such as the European Court of Human Rights and the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment. The *European Convention on the Exercise of Children's Rights* makes particular reference to the UNCRC in its preamble.²⁰

¹⁶ Available at: <http://www.oas.org>

¹⁷ Available at: <http://www.unhcr.org/refworld/docid/3ae6b38c18.html>

¹⁸ Available at: <http://www.hrcr.org/docs/Banjul/afhr.html>

¹⁹ Available at: <http://www.aseansec.org/AC.htm>

²⁰ Available at: <http://conventions.coe.int/Treaty/en/Treaties/html/160.htm>



3.4 International humanitarian law

International humanitarian law is part of international law, which governs relations between States through treaties and legally binding customary international law.

This body of law can be defined as the principles and rules which limit the use of violence in times of armed conflict. The aims are:

To protect persons who are not, or are no longer, directly engaged in hostilities-the wounded, shipwrecked, prisoners of war and civilians;

To limit the effects of violence in fighting to the attainment of the objectives of the conflict. (OHCHR, 2012c)

The four *Geneva Conventions* ('Conventions'), emerging in 1949, comprise a significant part of international humanitarian law as most States throughout the world have agreed to be bound by them.²¹ The Conventions establish international law standard for the treatment of war victims while two additional agreements - the Additional Protocols of 1977 relating to the protection of victims of armed conflicts - have broadened and supplemented the Conventions. The Conventions and their three Optional Protocols, reflecting standards of international humanitarian law, contain specific and general provisions specific to individuals, including children, affected by conflict.

The *Hague Conventions* were among the first formal international statements about war and war crimes.²² Since the first *Hague Convention* in 1899, subsequent conventions have emerged to protect children's human rights such as the *Hague Convention on Protection of Children and Co-operation in respect of Intercountry Adoptions*, addressing circumstances in which children may be adopted. This convention has three primary objectives: to promote children's best interests, standardize international adoption processes, and prevent child abuse, such as trafficking in children. The *Hague Convention on the Civil Aspects of Child Abduction* also exists to protect and promote children's human rights.²³

The *UNCRC Optional Protocol to the Convention on the Involvement of Children in Armed Conflict* (2000)²⁴ supports these conventions, for example, by prohibiting certain weapons and military tactics and protecting children. These

²¹ For more information see: <http://www.icrc.org/eng/war-and-law/treaties-customary-law/geneva-conventions/index.jsp>

²² For more information see: <http://www.icrc.org/ihl.nsf/full/195>

²³ See: The Honourable Judge Donna Martinson (2011). *Relocation Cases from the Perspective of Children – Viewing the Canadian Approach in an International Context*. Prepared for the 9th Biennial Continuing Legal Education Family Law Conference, July 8, 2011, Vancouver, British Columbia

²⁴ Available at: <http://www2.ohchr.org/english/law/crc-conflict.htm>

international humanitarian law provisions, which may reinforce international human rights treaties, protocols and other human rights instruments, have become integrated with customary international law.

3.5 Domestic context and international human rights law

States throughout the world have developed constitutions and domestic law that reflects fundamental human rights principles although there is significant variance among States in their approaches. In Canada, the federal government enters into international treaties without parliamentary approval. While it cannot require the provinces to implement international human rights treaties in areas falling within provincial/territorial jurisdiction, federal, provincial and territorial governments typically share their human rights agendas and the federal government enters into treaties with provincial/territorial endorsement (Eid, 2001).

Canada follows a dualist approach, which means that international human rights treaties must be incorporated into domestic legislation to have effect in domestic courts. Generally, international human rights treaties are not incorporated into domestic legislation, making their implementation a challenge within the provinces and territories (Eid, 2001). Evaluating Canada's compliance with its treaty obligations and related jurisprudence can be difficult as there are two areas to consider: jurisprudence for ordinary legislation and jurisprudence for the Canadian Constitution and the *Canadian Charter of Rights and Fundamental Freedoms* (Eid, 2001).

With respect to ordinary legislation, the courts have said that judges should strive to interpret such laws in accordance with relevant international obligations. If the express provisions of a domestic statute are contrary to or inconsistent with Canada's international obligations, the former prevails. Hence, the judiciary is not bound to apply Canada's international human rights treaty obligations, although they will be a relevant and influential factor in the courts' interpretation of the Charter (Eid, 2001, p. 6).

There can be uncertainty among judges and lawyers about the relationship between Canadian domestic law and international human rights treaties as Canada's treaty obligations may, or may not be, reflected within statutes at the provincial/territorial and federal levels. 'The problem is particularly acute when existing law is relied upon for ratification purposes' (Eid, 2001, p. 9). At the same time, the SCC has examined matters relating to fundamental human rights - such as equality and freedom of expression - and there is federal and provincial/territorial human rights legislation embedding these fundamental human rights principles (Eid, 2001).

International human rights treaties can act as an *interpretive* tool for domestic legislation and the Canadian constitution, with the result that judges vary in the weight they give to international human rights instruments and authorities in their judgments. The application of international human rights law in domestic courts in general, therefore, is complex and fraught with challenges, particularly when there are disparities and inconsistencies among laws, making it critical that a multi-faceted approach to human rights implementation is adopted.²⁵

4. When human rights are not relevant

We are the world's children.
We are the victims of exploitation and abuse.
We are street children.
We are the children of war.
We are the victims and orphans of HIV/AIDS.
We are denied good-quality education and health care.
We are victims of political, economic, cultural, religious and environmental discrimination. We are children whose voices are not being heard: it is time we are taken into account. (Children's Forum Message, 2002)

The children formulating the Children's Forum Message at the UN Special Session on Children spoke about what happens to children when realizing their human rights is *not* made relevant in their everyday lives. The existence of international human rights law has not prevented individual and groups of children from experiencing historical and current human rights violations throughout the international community and in developed, prosperous countries such as Canada, a State that the international community once considered a leader in promoting and protecting human rights.²⁶

Historically, many children worldwide have experienced human rights violations. In Canada, there is evidence of insufficient reliance upon international human rights law and human rights discourse to articulate historical violations of human rights against children (see BC Representative for Children and Youth, 2012). Aboriginal children experienced systemic human rights violations during the residential school years and these 'children continue to bear the impacts of a legacy of colonialism, racism and exclusion' (CCCYA, 2011, p. 3). The Truth and Reconciliation Commission's work has brought attention to human rights violations that Aboriginal children experienced in residential schools²⁷ although

²⁵ see also: McGinnis, J. (2006). *The Comparative Disadvantage of Customary International Law*, Harvard journal of law and public policy, vol. 30, pp 7-14.

²⁶ In 2010, Canada lost its seat on the UN Security Council.

²⁷ Available at: <http://www.trc.ca>

there is evidence that other children have experienced human rights violations (BC Representative for Children and Youth, 2012).

Adults have placed vulnerable children in institutions for centuries... In the 1980s and 1990s, governments and public discourse began to acknowledge the physical and sexual abuse of children in institutions, with emotional and other abuses becoming more prominently recognized in later years. Canadian inquiries into the historical experiences of these children have found that widespread systemic emotional, physical, spiritual, cultural and sexual abuse took place in institutions where children resided...

Children placed in institutions included: Aboriginal children in residential schools; children with mental disabilities (who were subjected to debilitating medical experimentation); children with developmental disabilities; children who were deaf; children of ethnic, racial and religious minorities; children whose behaviour was considered "socially unacceptable"; children with offending behaviours; children who were truant; and children requiring protection. "Socially unacceptable" children included young teenage mothers, who were placed in institutions with their babies. (BC Representative for Children and Youth, 2012, p. 7).

Currently, individual and groups of children throughout the world continue to experience human rights violations as evidenced by their inability to realize their human rights to: food, water, housing, education, healthcare, justice, family, welfare services (in areas such as adoption, alternative care and abduction), play, recreation and cultural activities, freedom of religion, identity, protection from violence, protection from trafficking, protection from exploitation, and protection from abductions (see Pinheiro, 2007; Commissioner for Human Rights, 2008).

In Canada, individual children and groups of children have experienced, and continue to experience, human rights violations under domestic human rights law, the UNCRC and other international human rights and humanitarian law. Omar Khadr is a Canadian captured in Afghanistan when he was 15 years old.

In 2008, the Supreme Court of Canada ('SCC') ruled that Canadian officials' affiliation with Guantánamo Bay - an association violating the *Geneva Conventions* - was contrary to Canada's binding international human rights obligations (SCC, 2008). In 2010, the SCC found that Khadr's rights to liberty and security of the person (see *Canadian Charter of Rights and Fundamental Freedoms*, Sec. 7) had been violated although the Supreme Court overturned Federal Court and Federal Court of Appeal rulings that ordered the government to request Khadr's immediate return (SCC, 2010).

In 2012, the UN Committee against Torture and Other Cruel, Inhuman or



Degrading Treatment or Punishment ('Committee against Torture') issued its Concluding Observations on Canada, making reference to the SCC decision and the delay in approving his request to be transferred to Canada (Committee against Torture, 2012). The observations urged Canada '... to promptly approve Omar Khadr's transfer application and to ensure that he receives appropriate redress for human rights violations that the Canadian Supreme Court has ruled he experienced' (Committee against Torture, 2012, para. 16(b)). The Committee also recommended that Canada raise awareness about the *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* among the judiciary and community members (Committee against Torture, 2012).

In their Concluding Observations, the Committee against Torture further expressed concern about Canada's Bill C-31 (*Protecting Canada's Immigration System Act*), recommending that Canada modify this bill and, in particular, '... its provisions regulating mandatory detention and denial of appeal rights, given the potential violation of rights protected by the Convention' (Committee against Torture, 2012, para. 13(b)). It also recommended that Canada use detention as a 'measure of last resort', set a reasonable time for detention, and make non-custodial and alternative measures available to persons in detention (Committee against Torture, 2012). This legislation may lead to human rights violations for refugee and immigrant children in Canada, a group of children who already face human rights violations, such as discrimination, in other areas of their lives.

Aboriginal children in Canada continue to experience human rights violations. Evidence confirms that '[t]o be an Indigenous child in Canada correlates with poverty-related barriers, including income, education and culture, employment, health, housing, being taken into care and justice. The disparities among Indigenous and non-Indigenous children are alarming...' (Turpel-Lafond, 2007 in CCCYA, 2011, p.3). Aboriginal children experience higher rates of malnutrition, disabilities, drug and alcohol abuse, and suicide than other children (CCCYA, 2011). In 2007, a Standing Senate Committee on Human Rights report also observed that '... Aboriginal children are living disproportionately in poverty and involved in the youth criminal justice and child protection systems' (CCCYA, 2011, p.4).

Other vulnerable children experiencing human rights violations in Canada include children with disabilities (including mental health), children in alternative care, ethnic minority children, LBGQT children, refugee/immigrant children, and children in the youth justice system (see CCCYA, 2011). In particular, children with disabilities, children in alternative care, and refugee/immigrant children may have difficulty realizing their entitlements to education. Children's right to play and recreational activities has not been fully realized as evidence suggests that children's participation in recreational activities has decreased and increasing numbers of children have reached levels of obesity. Children in Canada are

trafficked and subjected to other human rights violations such as exploitation (see Perrin, 2010).

As illustrated above, a well-researched understanding about the scope and applicability of international human rights law is necessary for recognizing the breadth of potential human rights violations that children may be experiencing under international human rights law, for identifying the source of their claims, and for identifying possible remedies. From children's standpoint, however, questions arise as to how they fully realize their rights within this challenging context.

5. Making human rights 'real' in children's everyday worlds

We want a world fit for children, because a world fit for us is a world fit for everyone. (Children's Forum Message, 2002)

While international human rights law provides the legal source for children's human rights, from children's perspectives its existence can appear far removed from their daily lives, raising questions about how children's human rights can be made relevant to children in meaningful and effective ways. This section, intended to promote discussion and action, introduces divergent but interrelated approaches situated within an international human rights law framework and vital to its human rights implementation agenda. Taking a holistic, coordinated and overarching approach that encapsulates key elements of implementation, it is suggested, is a necessary step towards making human rights relevant to children.

5.1 Concepts of children

We are not expenses; we are investments.
We are not just young people; we are people and citizens of this world.
We have the will, the knowledge, the sensitivity and the dedication.
You call us the future, but we are also the present. (Children's Forum Message, 2002)

Making children's human rights 'real' for children requires that children are valued as active social beings who share equal entitlement with adults to the full realization of their human rights.

Seeing children as individuals in their own right, and not as 'possessions of parents', is a concept supported by international human rights law, which recognizes the agency of all individuals, including children, and their equality in the world. While human rights have origins that precede the Declaration, this early Declaration establishes fundamental human rights principles that apply to



everyone, stating that all human beings are born free and equal in dignity and rights...' (Declaration, article 1).

... Drafted as 'a common standard of achievement for all peoples and nations', the Declaration for the first time in human history spell out basic civil, political, economic, social and cultural rights that all human beings should enjoy. It has over time been widely accepted as the fundamental norms of human rights that everyone should respect and protect. (OHCHR, 2012a)

The UNCRC, together with other international human rights treaties, further embeds the fundamental principle that children are individual rights bearers with equal entitlements to adults while, at times, requiring special consideration due to their unique and vulnerable status. The preambles in the Declaration and the UNCRC confirm the significance of individuals' dignity, equality and inalienable rights as foundational to a peaceful, just and free world.

Whereas 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. (Declaration, preamble; UNCRC, preamble)

Whereas the peoples of the United Nations have in the Charter reaffirmed their faith in fundamental human rights, in the dignity and worth of the human person... (Declaration, preamble; UNCRC, preamble)

The UNCRC has advanced concepts of children as rights holders, encouraging societies to treat children as social beings in their own right and as individuals with their own views about their experiences and the world around them. Researchers and child advocates have encouraged societies to recognize children as active agents, arguing, for example, that childhood is socially constructed, children's experiences are shaped by the cultural and structural context, children actively contribute to their social worlds, and childhood experiences are affected by factors such as gender, ethnicity and class (James and Prout, 1997).

There are indications within Canada, however, that federal, provincial and territorial governments can do more to recognize children as individuals rights bearers, particularly Aboriginal and other disadvantaged children who are experiencing human rights violations at individual and systemic levels (see CCCYA, 2011; Canadian Coalition for the Rights of the Child, 2011). In 2009, Canada submitted its report to the UN Committee monitoring Canada's implementation process.²⁸ Focused on Canada's record on children's human rights implementation, this report makes apparent the degree to which Canadian

²⁸ Available at: <http://www.pch.gc.ca/ddp-hrd/docs/index-eng.cfm>

governments value children, as reflected, for example, in governments' budgetary priorities and policy initiatives.

Child advocate alternative reports to the UN Committee indicate that too many children are not fully realizing their rights under international human rights law and that Canada needs to place greater value on children and the attainment of their entitlements (see CCCYA, 2011; Canadian Coalition on the Rights of the Child, 2011). The child advocate alternative reports made recommendations and proposed measures intended to enhance children's status within societies. The CCCYA special report draws particular attention to the crisis faced by Aboriginal and other vulnerable children²⁹ experiencing human rights violations and who continue to require governments to view those children as individual rights bearers entitled to be high priorities on government legislative and policy agendas.

Aboriginal children are a vital part of the social fabric of Canada. They are also among the most vulnerable populations of children with indicators showing that Aboriginal children are significantly disadvantaged as compared to their non-Aboriginal peers. Aboriginal children comprise an increasing proportion of all children in Canada, but they also represent a population overrepresented in statistics that consistently show them experiencing poor outcomes. We know that poor outcomes for Aboriginal children in key domains such as health, education, justice and child welfare is one of the largest national, provincial and territorial challenges faced by Canadian governments and society (CCCYA, 2011, p. 52).

Concepts of children are associated with human rights, participation, citizenship, empowerment and democracy. The above evidence suggests that to make human rights relevant for children, governments and other duty bearers need to evaluate their concepts of children and to consider how valuing children, and their autonomy, can be improved. These improvements need to include more opportunities for children to build their capacities to participate fully in realizing their entitlements.

5.2 Children's participation

We are children whose voices are not being heard: it is time we are taken into account.

Until others accept their responsibility to us, we will fight for our rights...

²⁹ 'These vulnerable children include children with disabilities; trafficked and sexually exploited children; children requiring protection; homeless children; children in the justice system; and children whose families live in poverty. Refugee, unaccompanied and separated children also intersect with these groups.' (CCCYA, 2012, p.1).



We promise to treat each other with dignity and respect. We promise to be open and sensitive to our differences.

... while we promise to support the actions you take on behalf of children, we also ask for your commitment and support in the actions we are taking – because the children of the world are misunderstood.

We see the active participation of children:

- raised awareness and respect among people of all ages about every child's right to full and meaningful participation, in the spirit of the Convention on the Rights of the Child,
- children actively involved in decision-making at all levels and in planning, implementing, monitoring and evaluating all matters affecting the rights of the child.

Until others accept their responsibility to us, we will fight for our rights.

We are united by our struggle to make the world a better place for all.
(Children's Forum Message, 2002)

Making children's human rights 'real' for children requires children's active and meaningful participation in all dimensions of their lives.

The right for children to participate in their lives is embedded in international human rights law, which considers participatory principles, such as freedom of expression, to be fundamental human rights principles. The freedom of expression principle, seen as a cornerstone of democratic rights and freedoms, emerged in the first UN General Assembly session as a fundamental human right.³⁰ It is a principle associated with other concepts such as individual dignity, participation, accountability and democracy. Freedom of association and assembly accompany freedom of expression as fundamental entitlements.

Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers (Declaration, article 19).

The UNCRC establishes children's freedom of expression and their participatory rights as its central human rights principle together with the best interests, non-discrimination and survival and development principles. The UNCRC participatory articles, or 'self expression articles', include children's entitlement to learn about their rights, claim their rights, and seek redress for breaches of rights (through judicial and administrative processes under UNCRC article 12.2).

³⁰ In 1946, the UN General Assembly adopted resolution 59(I) which states that 'Freedom of information is a fundamental human right and ... the touchstone of all the freedoms to which the United Nations is consecrated.'



UNCRC core participatory articles 12 and 13 affirm the value of children as individuals within their own right, with the accompanying right to acquire information and freely express their views about matters important to them.

Within this context, however, the UN Committee has emphasized that States implementing the UNCRC must have regard for the entire UNCRC and that there is no hierarchy of rights attributed to particular articles (Hodgkin and Newell, 2002). On the other hand, Freeman (2000, p. 288) has argued that the right of children to express their views in all matters affecting their lives (UNCRC article 12) is 'perhaps the most important provision in the Convention.' Koran (2001) described children's right to determination, to express their views freely on all matters affecting them and to participate in judicial and administrative processes as 'crucial'.

In its General Comments referring to States' responsibilities to take 'all appropriate legislative, administrative and other measures' for promoting children's rights (UNCRC article 4), the UN Committee advised that to ensure that children's rights become relevant to children, States need to 'engage all sectors of society and, of course, children themselves' (UN General Comment No. 5, 2003). In its earlier Reporting Guidelines (1996), the UN Committee, in reference to article 12, made specific reference to ways in which children should inform legislative, judicial and policy decisions, highlighting the role of complaints processes as a method for informing children's views (see UN Committee, 1996, para. 47).

Research indicates, however, that there are barriers to children participating in administrative proceedings, such as complaint processes (see Bell, 2008). In British Columbia, Canada, a joint special report by the BC Ombudsperson and the BC Representative for Child and Youth examined children's role in the BC Ministry for Children and Family Development ('Ministry') administrative proceedings - complaint resolution processes - established for children, and their advocates, with complaints about Ministry services (BC Ombudsperson & BC Representative for Children and Youth, 2009). The authors found seven areas where improvements were required, noting that children should be engaged in informing the Ministry about how to make the complaint resolution process more accessible to children (BC Ombudsperson & BC Representative for Children and Youth, 2009).

In judicial proceedings within Canada, there is evidence of inconsistent approaches to children's participation although in their analysis of children's right to have their views heard in legal proceedings in Canada, Brown and Dundee (2011) concluded that there is a growing trend in legislation and case law to 'consider' children's views. In their paper, these authors made specific reference to international human rights law as the authority for children's participation (Brown and Dundee, 2011).



As Justice Martinson argues in her paper and in the two cases referred to above, the basic framework for the court's obligation to hear from children and have their views considered in decisions affecting them is as follows:

- (a) The UN Convention on The Rights of the Child provides in Article 12 that, where a child wishes to and can express his or her views, they must be considered.
- (b) While Canada has not directly incorporated the terms of the Convention into domestic law, nonetheless, domestic law must be interpreted as conforming to those values and principles.
- (c) In most cases, the court will not be able to adequately discharge its statutory obligations to assess the best interests of the child before it without obtaining and considering that child's views.
(Brown and Dundee, 2011, p. 2.1.2)

Despite inconsistency in approaches, there are Canadian federal, provincial and territorial courts that have made references to international human rights law. In *A.C. v. Manitoba (2009)*, the SCC stated that '...[w]ith our evolving understanding has come the recognition that the quality of decision making about a child is enhanced by input from the child.' The SCC concluded that this approach is consistent with UNCRC's article 12, drawing attention to article 12's relationship with the UNCRC best interests principle (article 3) as a primary consideration in all actions concerning children. The SCC also made reference to UNCRC article 12.1, which requires that weight is given to children's views increasing in proportion to their developing maturity, and UNCRC articles 5 and 14, which require States to respect the responsibilities, rights and duties of parents to provide direction to children in exercising UNCRC rights 'in a manner consistent with the evolving capacities of the child.'

In *B.J.G. v. D.L.G. (2010)*, a Yukon Territory Supreme Court decision, Madame Justice Martinson addressed the right of children to participate in custody proceedings. In her decision, Martinson J. relied upon the UNCRC and Canadian domestic law as authorities for children's participation when she stated:

The Convention, which was ratified by Canada, with the support of the provinces and territories, in 1991, says that children who are capable of forming their own views have the legal right to express those views in all matters affecting them, including judicial proceedings. In addition, it provides that they have the legal right to have those views given due weight in accordance with their age and maturity. There is no ambiguity in the language used. The Convention is very clear; all children have these legal rights to be heard, without discrimination. It does not make an exception for cases involving high conflict, including those dealing with



domestic violence, parental alienation, or both. It does not give decision makers the discretion to disregard the legal rights contained in it because of the particular circumstances of the case or the view the decision maker may hold about children's participation (para. 3).

A key premise of the legal rights to be heard found in the Convention is that hearing from children is in their best interests. Many children want to be heard and they understand the difference between having a say and making the decision. Hearing from them can lead to better decisions that have a greater chance of success. Not hearing from them can have short and long term adverse consequences for them. (Martinson, J., 2010, para. 4).

Madame Justice Wedge, in a British Columbia Supreme Court decision *N.J.K. v. R.W.F.* (2011), also discussed children's right to participate in judicial proceedings. Madame Justice Wedge noted that Madame Justice Martinson '... points out that receiving children's input can reduce conflict by focusing or refocusing matters on the children and what is important to them... (per Martinson J. at paras. 23-24).' Both judges concurred that '...the Convention provides the necessary flexibility for the Court to make a determination as to whether a child is capable of forming his or her own views. Children must be capable of having the cognitive capacity to form their own views and express them...' (Wedge, J., 2011).

Making human rights relevant in children's lives, ensuring implementation, and preventing human rights violations requires children's active participation in all aspects of their daily lives, including in judicial and administrative proceedings. There are indications, however, that barriers exist to children's participation, including in judicial and administrative proceedings, and improvements are required to increase children's participation in all areas impacting their lives.

5.3 Research

We see... education for life that goes beyond the academic and includes lessons in understanding, human rights, peace, acceptance and active citizenship. (Children's Forum Message, 2002)

Making human rights 'real' for children necessitates reliance upon research to inform the relationship between international human rights law and the everyday realities of children's lives so improvements can be made where needed.

There is an inevitable relationship between international human rights law, how children experience their human rights, and research. Fully implementing children's human rights can be enhanced by research into international human rights law, which, in turn, can itself be evaluated for its effectiveness in protecting children and improving their lives. Applied social research into children's



experiences, informed by their perspectives, can be used to evaluate and improve children's lives from a human rights perspective. In her observations about child research, Mayall (2002) argues for the notion of a 'child standpoint' in which the researcher begins by 'looking up' as opposed to 'looking down.'

Including children as research subjects and participants, rather than objects of enquiry, has been shown...to reveal many novel aspects of the situations, settings and issues they were asked about. These are in danger of remaining invisible when research relies only on adult accounts. By engaging children in research they have been shown to have a 'standpoint', from which social life often appears differently from how it looks from an adult perspective. Of course any one child sees and speaks from multiple, combined and intersecting positions – of gender, class, ethnicity, disability and so on. However, within this diversity there appear also to be commonalities between children (Prout, 2002, p. 68).

The UN Committee in its 2003 Concluding Observations to Canada made specific recommendations regarding Canada's role in its research data collection.

The Committee recommends that the State party strengthen and centralize its mechanism to compile and analyze systematically disaggregated data on all children under 18 for all areas covered by the Convention, with special emphasis on the most vulnerable groups (i.e. Aboriginal children, children with disabilities, abused and neglected children, street children, children within the justice system, refugee and asylum-seeking children). The Committee urges the State party to use the indicators developed and the data collected effectively for the formulation and evaluation of legislation, policies and programs for resource allocation and for the implementation and monitoring of the Convention (UN Committee, 2003, para. 20).

The CCCYA special report observes that data collection, particularly regarding Aboriginal children, is problematic.

... data collection for Aboriginal children remains problematic and is not 'sufficiently developed, disaggregated and well synthesized for all areas covered by the Convention' as the Committee observed. Canada's 2009 report does not provide the Committee with an accurate overall picture of Aboriginal children's lives today. Research relevant to Aboriginal children's lives needs to be envisioned as a collaborative, nationwide endeavor whereby partners - Aboriginal, federal and provincial/territorial governments and researchers – agree on relevant indicators addressing the full scope of children's rights.

Harmonized and disaggregated data collection at the federal level would



enable it to collate, analyze, compare and report more accurately on leading indicators within key domains of Aboriginal children's lives (such as health, education, child welfare, justice and family status). Without ongoing and proper data gathering, analysis and dissemination, we cannot measure whether we are making progress in improving outcomes for Aboriginal children or which initiatives are making a difference. (CCCYA, 2011, p. 15).

Other child advocacy organizations have suggested that there are major gaps in data collection and analysis of the situation of children across Canada, noting that policy decisions are made without accurate assessment of needs and without sufficient quantitative and qualitative evidence (Canadian Coalition for the Rights of the Child, 2011). More analysis of available data is needed, including comparative studies of the varied situations of children across the country (Canadian Coalition for the Rights of the Child, 2011).

Children's ability to realize their rights depends upon what is known and understood about children's lives. Child centered research, from a human rights perspective, can play a significant role making it possible for children's voices to increase understandings about their lives. Specifically, research can inform about human rights violations, what gaps in knowledge exist, what might prevent human rights violations, how to make redress mechanisms more accessible, and how to ensure remedies exist for human rights violations. To achieve these goals, current research approaches need improvement and a commitment to quality, applied research that takes a human rights approach to learning about and applying lessons beyond academic and research environments.

5.4 Education

We see the provision of education:

- equal opportunities and access to quality education that is free and compulsory,
- school environments in which children feel happy about learning,
- education for life that goes beyond the academic and includes lessons in understanding, human rights, peace, acceptance and active citizenship.

(Children's Forum Message, 2002)

Making human rights 'real' for children requires education about human rights amongst all peoples and within all spheres of daily life. It also expects that all children will have equal access to education in general, a legalized right since the Declaration.

International human rights law requires States to ensure human rights education, as stipulated in such instruments as the *Declaration on the Right and*

Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms and the UN Declaration on Human Rights Education and Training. In 2004, the UN General Assembly created the World Program on Human Rights Education (WPHRD) for promoting human rights education, informing about its principles and goals, and implementing human rights education. The *UN Declaration on Human Rights Education and Training* provides standards and acts as a benchmark for measuring the WPHRD program.

Everyone has the right to know, seek and receive information about all human rights and fundamental freedoms and should have access to human rights education and training (*UN Declaration on Human Rights Education and Training*, 2011).

Principles relating to the status of national human rights institutions ('NHRI') specify the role of NHRI in promoting and protecting human rights (Paris Principles, article 1), making human rights education critical to NHRI's role. The UN Statement of Common Understanding (2003) '... aims to promote awareness among governments and other relevant institutions of their obligations to fulfil, respect and protect human rights³¹ and the UNCRC places obligations on States to provide human rights education.

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

- (b) The development of respect for human rights and fundamental freedoms, and for the principles enshrined in the Charter of the United Nations;
- (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...(UNCRC, article 1)

States Parties undertake to make the principles and provisions of the Convention widely known, by appropriate and active means, to adults and children alike. (UNCRC, article 42)

Hodgkin and Newell (2002, p. 611) observe that 'rights are of little use to individuals unless individuals are aware of them.' The UN Committee, in its guidelines for States periodic reporting on their UNCRC implementation, identifies measures required to inform the UN Committee about whether States are meeting their obligations pursuant to article 42 (UN Committee, 1996, para. 22). These measures, for example, require States to demonstrate the extent to which they have translated the UNCRC into various languages, generated

³¹ <http://hrbportal.org/the-human-rights-based-approach-to-development-cooperation-towards-a-common-understanding-among-un-agencies>



widespread awareness of UNCRC principles and provisions, and committed to educating public officials and professional groups working with children by incorporating the UNCRC into their training curricula, codes of conduct, or regulations (UN Committee, 1996, para. 22).

The UN Committee assesses other implementation criteria, such as whether States promote UNCRC understanding by the mass media and involve non-governmental organizations in awareness and advocacy campaigns about the UNCRC, providing them with necessary support (UN Committee, 1996, para. 22). States may illustrate children's participation in activities related to raising awareness about the UNCRC (UN Committee, 1996, para. 22). The UN Committee's General Comment No. 5 provides guidance on human rights education.

If adults around children, their parents and other family members, teachers and carers do not understand the implications of the Convention, and above all its confirmation of the equal status of children as subjects of rights, it is most unlikely that the rights set out in the Convention will be realized by many children. (UN Committee, General Comment No. 5, Para. 66).

In Canada, there is evidence that children and adults lack adequate awareness and understanding about human rights. The Senate Committee on Human Rights examined Canada's obligations under the UNCRC and whether Canada's legislation, as it applied to children, met State obligations under the UNCRC (Standing Senate Committee on Human Rights, 2007).

Our committee has heard numerous witnesses express concern about the lack of awareness, both in government, in Parliament, and among the public, of the Convention on the Rights of the Child and the rights enshrined in it. Throughout our hearings, we became aware there is very little knowledge about the Convention outside academic and advocacy circles. Even the reporting process to the UN Committee on the Rights of the Child has been unable to change this... In government, even among those dedicated to protecting children's rights, knowledge of the nearly 20-year-old Convention is spotty at best. (Standing Senate Committee on Human Rights, 2007, p. 195)

The Senate Committee observed that when so few people understand the UNCRC, it rarely filters down to protect the people who need to benefit from it. The Senate Committee reported that witnesses said that to implement the UNCRC, individuals needed to know how particular rights affected their lives and how the non-observance of rights could significantly alter lives (Standing Senate Committee on Human Rights, 2007). In its conclusions, the Senate Committee stated there was a need to educate Canadians about the importance of children's

rights and a rights-based approach within society in general (Standing Senate Committee on Human Rights, 2007).

Lawyers Human Rights Watch Canada reported a lack of international human rights training and education in British Columbia, noting human rights education is primarily associated with the *BC Human Rights Code* and the *Canadian Charter of Rights and Fundamental Freedoms* (Lawyers Human Rights Watch Canada, 2012). Their report also observed that knowledge about international human rights is 'poor' among British Columbia judges and lawyers and there is no coordinated strategy within British Columbia to make international human rights widely known (Lawyer's Human Rights Watch, 2012). UN treaty monitoring bodies have stressed the need for international human rights education and training to prevent ongoing human rights violations experienced by women, children, the poor and Aboriginal peoples (Lawyer's Human Rights Watch Canada, 2012).

General education and human rights

A vital component of human rights realization is access to education in general. Since the Declaration, this basic entitlement has been recognized in various human rights treaties such as the United Nations Educational, Scientific and Cultural Organization (UNESCO) *Convention against Discrimination in Education* (1960), the *International Covenant on Economic, Social and Cultural Rights* (1966), and the *Convention on the Elimination of all Forms of Discrimination against Women* (1981). Beyond entitlements to education as stipulated in the treaties, these treaties articulate education's primary purpose.

They affirm that the aim of education is to promote personal development, strengthen respect for human rights and freedoms, enable individuals to participate effectively in a free society, and promote understanding, friendship and tolerance. The right to education has long been recognized as encompassing not only access to educational provision, but also the obligation to eliminate discrimination at all levels of the educational system, to set minimum standards and to improve quality. In addition, education is necessary for the fulfillment of any other civil, political, economic or social right (UNICEF, 2007, p. 7).

The UNCRC's right to education (article 28) is strengthened through other articles specific to non-discrimination (article 2), best interests (article 3), right to life, survival and development (article 6) and participation (article 12). 'These underlying principles make clear a strong commitment to ensuring that children are recognized as active agents in their own learning and that education is designed to promote and respect their rights and needs (UNICEF, 2007, p. 8). The UNCRC sees individuals' right to education as associated with 'universality, participation, respect and inclusion' (UNICEF, 2007, p. 8).

Developing a general awareness and understanding about human rights is critical to making human rights relevant to children. Human rights education, access to education, and advocacy have complementary relationships necessary to that objective. Within Canada, however, evidence suggests that improvements are required. There is also a need to evaluate, from a human rights perspective, accessibility to education for Aboriginal children, children with disabilities, refugee/immigrant children and other groups of children who may be denied educational opportunities due to their special circumstances.

5.5 Human rights approaches

We pledge an equal partnership in this fight for children's rights. And while we promise to support the actions you take on behalf of children, we also ask for your commitment and support in the actions we are taking – because the children of the world are misunderstood.
(Children's Forum Message, 2002)

Making human rights 'real' for children requires rights-based approaches to legislation, policies and practices.

While it may be duty bearers' intention to make human rights relevant to children in ways that are experienced by them, putting human rights into everyday practice can be challenging. A commitment to adopting human rights approaches is necessary and yet complex, particularly among divergent groups and within varied contextual environments. It can be useful, therefore, to identify underpinning concepts and key principles to inform rights based approaches, directed at promoting the full realization of human rights for all individuals, including the most vulnerable and marginalized.

International human rights law underlies rights-based approaches by providing the legal framework from which to evaluate the quality of children's lives and to connect the multi-faced nature of childhood. These approaches are required under UN treaties, for example, and monitored by UN bodies and committees through reporting mechanisms. To facilitate rights-based approaches, the UN Committee offers guidance through its General Comments about how States can promote human rights implementation for children. These approaches require States, along with other measures, to evaluate domestic legislation to ensure that legislation, policies and practices are consistent with States' obligations under international human rights law.

A commonly expressed confusion flows from the mistaken assumption that there is ONE human rights based approach. The reality is that there are principles to be applied to achieve human rights standards, and the choice of methods, tools, etc are left to states, IGOs, bi-laterals etc to choose

according to what is most effective. A government, donor, or NGO may expect to use different approaches for different areas of work in different contexts. There is more than one human rights based approach to address any human rights challenge (International Human Rights Network, 2012).

Key concepts to inform rights-based approaches might include the recognition that human rights law is preeminent, human rights are not limited to domestic law 'rights' but include international law rights, human rights approaches can be multiple, and there is a need to engage in active learning to identify human rights based solutions (International Human Rights Network, 2012). The International Human Rights Network suggests that are legal principles that can guide human rights approaches, such as:

- express application of the international human rights framework;
- empowerment of rights holders;
- participation in one's own development (as of right and not just as best practice);
- non-discrimination and prioritization of vulnerable groups;
- accountability of duty-bearers to rights-holders (for process and impact)

(International Human Rights Network, 2012).

Through its own learning experiences, the International Human Rights Network³² has identified general principles that can guide rights-based approaches: legitimacy (gained from inherent human rights reflected in international human rights law), empowerment (human rights can empower silenced individuals and communities to know about and claim their rights), transparency (rights holders and duty bearers share same understanding about human rights), participation (opportunities for individuals and communities to participate are maximized), multi-level (human rights exist at diverse levels, requiring systemic and strategic approaches), and broad-based (all areas affecting individuals' lives need to be informed by human rights).

Within the UN, a Statement of Common Understanding ('UN Statement') provides guidance to UN agencies about rights-based approaches to their activities and programs (UN, 2004).

The Statement begins by stipulating that:

All programs of development cooperation, policies and technical assistance should further the realization of human rights as laid down in the Universal Declaration of Human Rights and other international human rights instruments. (UN Statement, 2004, p. 91)

³² See http://www.ihrnetwork.org/what-are-hr-based-approaches_189.htm for more information about human rights approaches.



The UN Statement, arising from agencies' experiences with implementation, requires that the Declaration and other international human rights instruments reflecting fundamental human rights principles inform the human rights standards used to guide UN programs and activities (UN Statement, 2004). The fundamental principles proposed include: 'universality and inalienability; indivisibility; interdependence and interrelatedness; non-discrimination and equality; participation and inclusion; accountability and the rule of law' (UN Statement, 2004, p. 91).

According to the Statement, rights-based approaches need to enhance duty bearers capacities to meet their obligations while strengthening the capacity of rights holders to claim their rights, making apparent the relationship between individuals and groups with claims (rights holders) and duty bearers, such as the State and other secondary duty bearers, with corresponding obligations (UN Statement, 2004). Rights-based approaches may coordinate legal principles, policies and practices while embedded human rights principles in domestic law and policies can make governments and other public authorities more accountable to children.

In Canada, children's rights advocates have observed in their recent alternative reports to the UN Committee that governments, as duty bearers, need to adopt rights-based approaches, complemented by child rights impact assessments (see CCCYA, 2011; Canadian Coalition on the Rights of the Child, 2011) as a method for holding duty bearers accountable for their obligations to children. These assessments can reveal the nature of the duty bearer and rights holder relationship, highlighting areas for improvement in duty bearer accountability and rights holder empowerment.

Making human rights relevant to children necessitates rights-based approach to legislation, policies and practices. The extent of human rights violations tells us that human rights-based approaches are required in Canada.

5.6 Implementation and monitoring

We see respect for the rights of the child:
governments and adults having a real and effective commitment to the principle of children's rights and applying the Convention on the Rights of the Child to all children... (Children's Forum Message, 2002)

Making human rights 'real' for children requires all duty bearers to implement and monitor human rights implementation within their jurisdictions. This role needs to be fulfilled in partnership with children as active participants.



Human rights entail both rights and obligations. States assume obligations and duties under international law to respect, to protect and to fulfil human rights... The obligation to fulfil means that States must take positive action to facilitate the enjoyment of basic human rights... Where domestic legal proceedings fail to address human rights abuses, mechanisms and procedures for individual complaints or communications are available at the regional and international levels to help ensure that international human rights standards are indeed respected, implemented, and enforced at the local level. (OHCHR, 2012)

Respecting international human rights law requires States to protect and promote human rights within their jurisdictions. States that have signed and ratified core UN human rights treaties and protocols, for example, are required to submit periodic reports to various treaty bodies responsible for holding States accountable for human rights implementation. The UNCRC and its Optional Protocols are among several core human rights treaties and protocols requiring implementation and monitoring by UN bodies with corresponding responsibilities. The UNCRC requires implementation under its article 4 while article 44 stipulates that States must report to the UN Committee on a periodic basis about the status of that implementation.

States Parties shall undertake all appropriate legislative, administrative, and other measures for the implementation of the rights recognized in the present Convention... (UNCRC, article 4).

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... (UNCRC, article 44).

The UN Committee, responsible for *external* monitoring through its reporting process, issues guidelines to assist States with reporting on their UNCRC obligations. The UN Committee stipulates, for example, that domestic legislation must be fully compatible with the UNCRC and its principles and provisions directly applied and appropriately enforced (see UN General Comment No. 5, 2003). The UN Committee has identified a wide range of measures needed for effective implementation, including the development of special structures and the 'monitoring, training and other activities in Government, parliament and the judiciary at all levels' (UN Committee General Comment No. 5, 2003, p. 2).

The UN Committee also requires that States demonstrate they have taken *internal* monitoring measures to implement the UNCRC. These measures include those such as:



- instituting a national agenda for children;
- developing mechanisms to coordinate government sectors, monitoring and evaluation;
- incorporating the UNCRC into domestic law and ensuring UNCRC principles override conflicts with national legislation;
- carrying out child impact assessments on policy initiatives;
- assessing budgets and their impact on children to ensure resource effectiveness;
- carrying out research;
- educating about the UNCRC;
- involving civil society, including children, in implementation;
- establishing independent statutory offices, such as ombudspersons, commissions or other institutions, to promote and protect children's rights. (UN Committee, General Comment No. 2, 2002).

Other measures States may adopt may include law reform (which should include consideration of effective remedies for children and their representatives if children's rights are breached) and the establishment of independent NHRI for children, such as children's ombudsman offices and children rights commissioners. The UN Committee has highlighted the critical role of NHRI and structures within government for ensuring coordination, implementation and systematic monitoring of UNCRC realization (UN Committee, General Comment No. 2, 2002). Specifically, the UN Committee has noted that complaints procedures are required for implementing articles 12 (expression of views) and 19 (protection from violence and abuse).

While Canada has reported to UN treaty monitoring bodies on the fulfillment of its human rights obligations, there is evidence that Canada has not adequately implemented and monitored human rights implementation within its jurisdiction.³³ For example, in 2009, Canada underwent a review before the UN Human Rights Council Universal Periodic Review working group.³⁴ There were 45 States that made recommendations to Canada about how to improve on its human rights obligations,³⁵ with Canada committing to address various recommendations by 2013. Many recommendations have direct relevance to children, particularly Aboriginal children, children with disabilities, children subjected to violence, trafficked children, children in detention and children living in poverty.

³³ Canada has also reported on UN treaties that have relevance to children such as the *International Covenant on Civil and Political Rights*, *International Covenant on Economic, Social and Cultural Rights*, *International Convention on the Elimination of All Forms of Racial Discrimination* and the *Convention against Torture and Other Cruel, Inhuman or Degrading Punishment or Treatment*.

³⁴ See *National Report of Canada under the Universal Periodic Review*. Available at: <http://www.pch.gc.ca>

³⁵ See *Report of the Working Group of the Universal Periodic Review*. Available at: <http://www.pch.gc.ca/pgm/pdp-hrp/inter/upr-eng.cfm>

Since 1993, Canada has reported to the UN Committee about the UNCRC and its Optional Protocols. In response, the UN Committee has made recommendations to Canada about how it can improve its human rights implementation and its monitoring of its human rights obligations within its jurisdiction. In 2012, the UN Committee is reviewing Canada's 2009 report elaborating on federal, provincial and territorial initiatives.³⁶ The CCCYA special report observed that despite various initiatives, Canada is not fully implementing the rights of Aboriginal and other vulnerable and marginalized children, asking the UN Committee to make 40 recommendations to Canada during its review process.

Making human rights relevant to children and addressing human rights violations requires implementation together with external and internal monitoring of States' commitments to fulfill their human rights obligations. Within Canada, ongoing human rights violations that children are experiencing suggests that improvements are required to better implement and monitor the UNCRC and other human rights instruments.

5.7 Redress and reconciliation

We are not the sources of problems; we are the resources that are needed to solve them. (Children's Forum Message, 2002)

Making human rights 'real' for children necessitates that children have access to redress mechanisms, such as administrative and judicial processes, to seek redress for human rights violations. Reconciliation is increasingly seen as a vital component of remedying human rights violations and an approach that can facilitate human rights implementation for children, particularly those who have experienced human rights violations.

International human rights law makes provision for victims redress when individuals and communities have experienced gross human rights violations.

Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law. (Declaration, article 8)

There are other international human rights instruments that recognize victims' right to redress for human rights violations, such as the *Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law* and *Serious Violations of*

³⁶ Available at: <http://www.pch.gc.ca>

*International Humanitarian Law.*³⁷ States parties that have violated the human rights of individuals within their jurisdiction are required to recognize procedural and substantive rights to an appropriate remedy. Bodies such as the International Criminal Court, the African Court of Human Rights, and the European Court of Human Rights have emerged to provide mechanisms through which individuals can make claims of injustice and the core UN human rights treaties have complaints procedures for individuals seeking redress.

The UNCRC anticipates that children will experience human rights violations as reflected in its article 12.2, the UN Committee's guidance on NHRI, and the UN Committee's guidance on child participation. In recognition that children may be denied adequate remedies to human rights violations within their own countries, a UNCRC third Optional Protocol has introduced a 'communications' process for children to claim human rights violations and pursue remedies when they are unable to do so within their own States.³⁸ The UN Committee's guidance on child participation, for example, makes it clear that children must have access to remedies for possible human rights violations, including violations related to their participatory rights.

Legislation is needed to provide children with complaint procedures and remedies when their right to be heard and for their views to be given due weight is disregarded and violated. Children should have the possibility of addressing an ombudsman or a person of a comparable role in all children's institutions...in order to voice their complaints. Children should know who these persons are and how to access them...

If the right of the child to be heard is breached with regard to judicial and administrative proceedings (art. 12, para. 2), the child must have access to appeals and complaints procedures which provide remedies for rights violations. Complaints procedures must provide reliable mechanisms to ensure that children are confident that using them will not expose them to risk of violence or punishment. (UN Committee General Comment No. 12, 2009, para. 66- 67)

Administrative proceedings

In Canada, children have accessed administrative proceedings - at federal and provincial levels - to claim human rights violations pursuant to UNCRC article 12.2. At the federal level, for example, Aboriginal children's advocates made a

³⁷ See also: *American Convention on Human Rights, International Covenant on Civil and Political Rights, Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, and European Convention for the Protection of Human Rights and Fundamental Freedoms.*

³⁸ Available at: <http://treaties.un.org/doc/Treaties/2011/12/20111219%2003-15%20PM/CTC%204-11d.pdf>



complaint to the Canadian Human Rights Commission about possible discriminatory practices under federal human rights legislation. The complaint alleged that federal child welfare services' funding for children on reserves was less than provincial/territorial funding for children living off reserve. After the Canadian Human Rights Tribunal ('Tribunal') found there was no discrimination against Aboriginal children on reserves, the Federal Court appeal decision found the Tribunal's own process in arriving at its decision was unfair and referred the matter back to the Tribunal for another hearing.

At the provincial level, children (and their advocates) have made complaints about possible human rights violations through public services administrative proceedings, such as complaints and appeals processes associated with child welfare services, education, health and juvenile justice. Children (and their advocates) have made complaints to provincial human rights institutions and children's rights advocacy offices, which have administrative processes through which children's complaints may be remedied. There is a gap in research, however, about the accessibility of administrative proceedings (such as complaints processes) to children, whether a human rights approach informs these processes, and whether these processes are effective from children's perspectives.

Judicial proceedings

In Canada, children have been the subjects of and participated in judicial proceedings. Some Canadian courts have cited international human rights law and its relationship to children in their judgments although the courts have varied in their approaches to international human rights law and its applicability.

In *Baker v Canada* (1999), the SCC cited the *Canadian Charter of Fundamental Human Rights and Freedoms*, the UNCRC (the preamble, Arts. 3(1), 3(2), 9, 12) and the *Declaration of the Rights of the Child* (1959) preamble. In reversing a Federal Court of Appeal decision, the SCC held that procedural fairness required the decision-makers (immigration officers) to consider the human rights of Baker's children and, in particular, their rights under the UNCRC. It noted that decision-makers must be 'reasonable', while finding that Ministerial decisions should follow values in international human rights law. The SCC observed that children's rights correspond with humanitarian and compassionate values in Canadian society.

In *Canadian Foundation for Children, Youth and the Law v. Canada (Attorney General)* (2002), the SCC addressed the issue of children's physical punishment. The SCC cited the *Convention for the Protection of Human Rights and Fundamental Freedoms*, *Convention on the Elimination of All Forms of Discrimination against Women*, and the UNCRC. It also made reference to

various UN Committee reports (i.e. reports submitted by States and reports adopted by the UN Committee) and the Human Rights Committee (i.e. three reports dated 1995, 1999 and 2000). The SCC determined that while 'the best interests of the child' is a recognized legal principle, the legal principle was not a principle of fundamental justice, stating that UNCRC article 3(1) of the UNCRC describes it as 'a primary consideration' rather than 'the primary consideration.'

These decisions illustrate the breadth of international human rights law the SCC relied upon and also the different approaches taken by the court regarding what it identified as relevant to determinations about children's human rights. More research is required into children's experiences with judicial proceedings and domestic courts reliance upon international human rights law in matters affecting children so improvements can be made to human rights implementation within judicial proceedings.

Reconciliation

Within local and international communities, individuals have experienced widespread, systemic human rights violations despite the existence of international human rights law. In response, transitional justice, which draws upon human rights principles, has emerged as a way to hold accountable individuals, governments and groups responsible for systemic human rights violations while building peaceful relationships among individuals and communities impacted by the violations.

Reconciliation, which may or may not exist as a component of transitional justice, '... is the process of addressing conflictual and fractured relationships' through a range of different activities (Hamber & Grainne, 2004). Increasing attention is being paid to individuals' participation, including the participation of children, in giving voice to the human rights violations they have experienced and the remedying of human rights violations in ways that promote individuals', families' and communities' healing and that prevent further human rights violations.

In Canada, Aboriginal students from a school in Nova Scotia participated in a 'Youth Dialogue' hosted by Canada's Truth and Reconciliation Commission established for individuals affected by the residential school system in Canada.³⁹ These students subsequently created a documentary, which speaks to the intergenerational effects of the residential schools and the Truth and Reconciliation's work to address the residential school legacy. During a student-led forum on the legacy of the IRS system, youth discussed the residential school effects on their lives, whether Canadian schools adequately teach about residential schools, and the meaning and methods of achieving reconciliation,

³⁹ For more information see: The Truth and Reconciliation website at <http://www.trc.ca> and the International Center for Transitional Justices at <http://www.ictj.org>.

subsequently making recommendations to a Listener's Panel of adults. More research is required, however, to learn about children's experiences with truth commissions, reconciliation processes, and judicial and administrative procedures (see International Centre for Transitional Justice, UNICEF Innocenti Research Centre, 2010).

5.8 National human rights organizations⁴⁰

In this world, we see respect for the rights of the child: governments and adults having a real and effective commitment to the principle of children's rights and applying the Convention on the Rights of the Child to all children... (Children's Forum Message, 2002).

Making human rights 'real' for children requires NHRI with legislated mandates to promote and protect children's human rights. NHRI can monitor human rights implementation and hold duty bearers accountable in ways that include providing opportunities for children to make complaints about possible human rights violations and making recommendations for future change.

In 1991, the UN sponsored the First International Workshop on National Institutions for the Promotion and Protection of Human Rights. The World Conference on Human Rights in 1992 led to the 1993 'Paris Principles' resolution defining principles expected to guide the work of NHRI. These principles state that these institutions 'shall be vested with the competence to promote and protect human rights' with a broad mandate to examine and report, independently, on 'any situation of violation of human rights which it decides to take up' (UN General Assembly, 1993). The Paris Principles are the principal source of normative standards for NHRIs, applying to all institutions regardless of type or structure.

The UN resolution also refers to 'additional principles concerning the status of commissions with quasi-judicial competence' in which it is stated that a 'national institution may be authorized to hear and consider complaints and petitions concerning individual situations' (UN General Assembly, 1993). In carrying out this function, the Paris Principles impose certain obligations on NHRI, which include using conciliation to encourage an 'amicable settlement', on the basis of confidentiality, and informing individuals making the complaint about their rights and remedies available to them, and promoting access to such remedies (UN General Assembly, 1993). The Paris Principles state that NHRI

⁴⁰ 'National human rights institutions include ombudsman offices, national human rights commissions, hybrid institutions combining ombudsman and commission characteristics, human rights commissions with a focus on particular issues, parliamentary human rights bodies, and national humanitarian law-focused bodies' (Alston and Tobin, 2005, xi).



should also assume responsibility for 'transmitting [complaints] to any other competent authority within the limits prescribed by law' and make recommendations to competent authorities if changes to laws, regulations or administrative practices are required, particularly if they lead to difficulties for the person attempting to assert their rights (UN General Assembly, 1993).

In the late 1990s, the UN Committee and the former High Commissioner for Human Rights advocated for establishing NHRI for children that they foresaw as filling various functions, including protecting, promoting and monitoring child rights implementation. Since its inception, the UN Committee has recommended States create independent NHRI with an inherent mandate to address issues specific to children (Hodgkin and Newell, 2002). In 1999, the United Nations Commissioner for Human Rights reported to the UN Committee on the emphasis she placed upon 'supporting the establishment of national institutions for the promotion and protection of human rights' and suggested that those institutions consider their role in relation to child rights (Hodgkin and Newell, 2002, p. 77).

Few, if any, government departments have no effect on children's lives, direct or indirect. Rigorous monitoring of implementation is required, which should be built into the process of government at all levels but also independent monitoring by national human rights institutions, NGOs and others. (UN Committee General Comment No. 5, 2003)

Among the general internal monitoring measures that States may adopt are independent NHRI for children. The UN Committee has recommended law reform and independent national human rights institutions, such as children's ombudsman offices, children's advocacy offices, and child rights commissioners, to assess rights implementation. The UN Committee has also highlighted the importance of 'focal points' within national human rights institutions alongside child rights-focused permanent institutions and structures within government to ensure coordination, implementation and systematic monitoring of UNCRC implementation.

The UN Committee, in promoting the establishment of NHRI, has emphasized the importance of their independence from government to facilitate adequate monitoring, promotion and protection of children's human rights. The UN Committee advised those institutions to adopt the Paris Principles and, in its Concluding Observations to various States, the UN Committee made reference to children's access to complaints procedures for claiming rights violations, linking those claims with NHRI (Hodgkin and Newell, 2002). The UN Committee does not monitor individual or collective breaches of rights within States, however, it does require States to 'provide information on remedies available in cases of violation of the rights recognized by the Convention', including independent NHRI (see United Nations, Guidelines for Periodic Reports, 1996).

According to the UN Committee, it is essential that promotion and protection of children's rights - including children's civil, political, economic, social and cultural rights - is 'mainstreamed' with provision made for complaints processes that are child-friendly in design, accessible and well-publicized to children (UN Committee General Comment No. 2, 2002; Hodgkin and Newell, 2002).

NHRIs must have the power to consider individual complaints and petitions and carry out investigations, including those submitted on behalf of or directly by children. In order to be able to effectively carry out such investigations, they must have the power to compel and question witnesses, access relevant documentary evidence and access places of detention. They also have a duty to seek to ensure that children have effective remedies – independent advice, advocacy and complaints procedures – for any breaches of their rights. When appropriate, NHRIs should undertake mediation and conciliation of complaints. (UN Committee General Comment No. 2, 2002, para. 13)

The UN Committee, in its general guidelines for periodic reports, require States to provide information on 'any independent body established to promote and protect the rights of the child', advising that such institutions should be developed in accordance with the Paris Principles (UN Committee General Comment No. 2, 2002) and providing States with reasons why independent institutions need to exist:

- children's developmental status means they are particularly vulnerable to human rights violations;
- their opinions are still rarely taken into account;
- most children have no vote and cannot play a meaningful role in the political process that determines government's response to human rights;
- children encounter significant problems in using the judicial system to protect their rights or to seek remedies for violations of their rights;
- children's access to organizations that may protect their rights is generally limited. (UN Committee General Comment No. 2, 2002)

In Canada, there is a federal human rights commission together with provincial human rights commissions and legally mandated children's advocacy offices with mandates to promote and protect children's human rights. More research is required to determine to what extent children know about these bodies, their accessibility to children, their effectiveness in advancing children's human rights, and whether they are compliant with Paris Principles. The ongoing violations of children's human rights, however, suggest that these bodies require additional leverage through which to prevent human rights violations and make human rights more relevant to children.

6. Conclusion

Ten years have passed since children delivered their forum message, agreed upon by 400 child delegates, to the UN General Assembly in New York. It was a message that saw human rights as relevant in children's lives, particularly for children who experience exploitation and abuse, homelessness, war, HIV/AIDS, lack of education and health care, discrimination and lack of voice. It was a message that invited adults to join with children in an 'equal partnership' to defend children's rights and '... to make the world a better place for all.' And yet, despite this message, children throughout the international community, including in Canada, continue to struggle to realize their human rights codified in international human rights law.

Within that context, this paper has considered how human rights can be made relevant, or 'real', for children. It has highlighted challenges to defining children's human rights, determining what rights are relevant to children, and the complexity of international human rights law as the legal source for children's human rights. The paper concludes that international human rights law needs to define children's human rights and to determine what human rights are relevant to children's lives. It proposes that multi-dimensional approaches, informed by children's voices, coordinated through children's strategies for human rights implementation, and framed by international human rights law, have the potential to make human rights 'real' for children entitled to live in a world that is a 'better place for all.'



References

- Bell, N.M. (2008). *Young people at residential school: Rights, communications and 'complaints'* (Doctoral dissertation, University of Glasgow, Scotland). Retrieved from <http://theses.gla.ac.uk/473/>
- BC Ombudsperson and BC Representative for Children and Youth (2010). *Hearing the Voices of Children and Youth: A Child-Centred Approach to Complaint Resolution*. Retrieved from http://www.ombudsman.bc.ca/images/resources/submissions/submission_docs/HearingtheVoices.pdf
- Representative for Children and Youth, British Columbia. (2012). *Aboriginal children: Human rights as a lens to break the intergenerational legacy of residential schools*. Submitted to the Truth and Reconciliation Commission of Canada. Retrieved from <http://www.rcybc.ca/Images/PDFs/Submissions/RCY-AboriginalChildrenFINAL.pdf>
- Brown, T., Dundee, D. (2011). *The Law and a Child's Right to be Heard & Have Their Views Considered*. Children's Participation in Family Justice – 2011 Paper 2.1. Paper prepared for Continuing Legal Education Society of British Columbia.
- Canadian Council of Child and Youth Advocates. (2011). *Special Report: Aboriginal children Canada must do better: Today and tomorrow*. Retrieved from <http://www.releases.gov.nl.ca/releases/2012/cyfs/0206n03.htm>
- Canadian Coalition for the Rights of the Child. (2011). *Right in principle, right in practice: Implementation of the Convention on the Rights of the Child in Canada*. Retrieved from <http://rightsofchildren.ca/wp-content/uploads/CCRC-Report-to-UN-on-CRC.pdf>
- Children's Forum Message: *A World Fit For Us*. (2002). Message drafted, debated, and agreed by the 400 Delegates of the Children's Forum, part of the Meeting of Under-18 Delegates to the United Nations Special Session on Children. Delivered by children to the General Assembly of the United Nations.
- Commissioner for Human Rights. (2008). *Children and corporal punishment: 'The right not to be hit, also a children's right'*. Strasbourg, France: Council of Europe.



- Eid, E. (2001). *Interaction between international and domestic human rights law: A Canadian perspective*. Paper presented at The International Centre for Criminal Law Reform and Criminal Justice Policy, Vancouver, B.C., Canada.
- Freeman, M. (2000). Freeman, M., 2000. The future of children's rights. *Children & Society*, 14, 277 – 293.
- Hamber, B, Grainne, K. (2004). *Reconciliation: A working definition*. Democratic Dialogue. Retrieved from <http://www.democraticdialogue.com/>
- Hodgkin, R., Newell, P. (2002). *Implementation handbook for the Convention on the Rights of the Child*. Fully Revised Edition. Geneva, Switzerland: UNICEF.
- International Centre for Transitional Justice, UNICEF Innocenti Research Centre (2010). *Children and Truth Commissions*. Florence, Italy: UNICEF Innocenti Research Centre.
- International Human Rights Network (2012). *Human rights based approaches in EU development policies*. Retrieved from http://www.ihrnetwork.org/hr-based-approaches_180.htm
- International Labour Conference. (2009). *The cost of coercion: Global Report under the follow-up to the ILO Declaration on Fundamental Principles and Rights at Work*. Report I(B). Geneva, Switzerland: International Labour Office.
- James, A., & Prout, A. (1997). A new paradigm for the sociology of childhood: Provenance, promise, and problems. In A. James & A. Prout (Eds.), *Constructing and reconstructing childhood: Contemporary issues in the sociology of childhood* (pp. 7-33). London, UK: Falmer Press.
- Koren, M., 2001. *Human rights of children: an emerging story*. The Lion and the Unicorn, 25, 242-259.
- Lawyers' Rights Watch Canada (2012). *The right to know our rights. International law obligations to ensure international human rights education and training in British Columbia*. Retrieved from <http://www.lrwc.org/the-right-to-know-our-rights-international-law-obligations-to-ensure-international-human-rights-education-and-training/>
- Mayall, B. (2002). *Towards a sociology for childhood: Thinking from children's lives*. Buckingham, UK: Open University Press.



- Office of the High Commissioner for Human Rights. (2012). *What are human rights?* Retrieved from <http://www.ohchr.org/EN/Pages/WelcomePage.aspx>
- Office of the High Commissioner for Human Rights. (2012b). *International Human Rights Law*. Retrieved from <http://www.ohchr.org/en/professionalinterest/Pages/InternationalLaw.aspx>
- Office of the High Commissioner for Human Rights (2012c). Fact Sheet No. 13. Retrieved from <http://www.ohchr.org/en/professionalinterest/Pages/InternationalLaw.aspx>
- Pinheiro, P. (2007). *World report on violence against children*. Geneva, Switzerland: United Nations.
- Perrin, B. (2010). *Invisible Chains: Canada's Underground World of Human Trafficking*. Canada: Penguin Group.
- Prout, A., 2002. Researching children as social actors: An introduction to the children 5-16 programme. *Children & Society*, 16, 67-76.
- Standing Senate Committee on Human Rights, 2007. *Final Report of the Standing Senate Committee on Human Rights (2007). Children: The Silenced Citizens. Effective Implementation of Canada's International Obligations with Respect to the Rights of Children*. Senate Committee on Human Rights. Retrieved from http://www.canadiancrc.com/PDFs/Canadian_Senate_Report_Children_Silenced_Citizens_10APR07-e.pdf
- Trebilcock, M.J., & Howse, R. (2005). *The regulation of international trade* (3rd ed.). Abingdon, Oxon: Routledge.
- United Nations (2004). The State of the World's Children, Annex B, *Human Rights Based Approach, Statement of Common Understanding*. Retrieved from <http://www.unicef.org/sowc04/files/AnnexB.pdf>
- United Nations (2012). Committee against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. (2012). *Concluding Observations on Canada*. Retrieved from <http://www2.ohchr.org/english/bodies/cat/cats48.htm>
- United Nations (2003). Committee on the Rights of the Child. *Concluding observations of the Committee on the Rights of the Child: Canada*, CRC/C/15. Retrieved from http://www.canadiancrc.com/UN_CRC/UN_Committee_Rights_Child_Canada_Report-Overview_SEP_2003_34th_Session.aspx



- United Nations (1996). Committee on the Rights of the Child. *General Guidelines regarding the form and contents of periodic reports to be submitted by States Parties under article 44, paragraph 1(b), of the Convention*, (CRC/C/58, 20 November 1996).
- United Nations (2002). Committee on the Rights of the Child. *The role of independent national human rights institutions in the protection and promotion of the rights of the child*. CRC/GC/2002/2, GENERAL COMMENT No. 2.
- United Nations (2003). Committee on the Rights of the Child. *General measures of implementation of the Convention on the Rights of the Child (arts. 4, 42 and 44, para. 6)*. CRC/GC/2002/2, GENERAL COMMENT No. 5.
- United Nations (2009). Committee on the Rights of the Child. *General measures of implementation of the Convention on the Rights of the Child (arts. 12)*. CRC/GC/12, GENERAL COMMENT No. 12.
- United Nations General Assembly (1989). *Convention on the Rights of the Child*. United General Assembly Document, A/RES/44/25.
- United Nations General Assembly (2011). *Declaration on Human Rights Education and Training*. Geneva: General Assembly of the United Nations.
- United Nations General Assembly (1989). *United Nations Convention of the Rights of the Child*. Geneva: General Assembly of the United Nations.
- United Nations General Assembly (1993). *National institutions for the promotion and protection of human rights*. Resolution 48/134.
- United Nations General Assembly (1948). *Universal Declaration of Human Rights*. 217 A (III).
- United Nations Treaty Collection (2012). Retrieved from http://treaties.un.org/Pages/Overview.aspx?path=overview/definition/page1_en.xml
- UNICEF (2007). *A Human Rights-Based Approach to Education for All*. United Nations Children's Fund/United Nations Educational, Scientific and Cultural Organization. New York and France.

Judgments

A.C. v. Manitoba (Director of Child and Family Services), 2009 SCC 30, [2009] 2 S.C.R. 181

Baker v. Canada (Minister of Citizenship and Immigration), [1999] 2 S.C.R. 817

B.J.G. v. D.L.G., 2010 YKSC 44

Canada (Justice) v. Khadr, [2008] 2 S.C.R. 143, 2008 SCC 29

Canada (Prime Minister) v. Khadr, 2010 SCC 3, [2010] 1 S.C.R. 44

Canadian Foundation for Children, Youth and the Law v. Canada (Attorney General), [2004] 1 S.C.R. 76, 2004 SCC 4

N.J.K. v. R.W.F., 2011 BCSC 1666