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SUBMISSION ON UN OPTIONAL PROTOCOL
TO THE CONVENTION ON THE RIGHTS OF THE CHILD
ON THE SALE OF CHILDREN, CHILD PROSTITUTION
AND CHILD PORNOGRAPHY

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Justice for Children and Youth is a legal clinic and the operating arm of the Canadian Foundation for Children, Youth and the Law. The clinic provides select legal representation to youth aged 17 and under in the areas of income maintenance, education, criminal law, family law, mental health law, health law, constitutional law and human rights. The clinic has extensive experience over 15 years representing street-involved youth, young people living independently, young people in the care of a children's aid society, and young people living with families. Justice for Children and Youth prepares policy/law reform positions on issues relating to the legal practice of the clinic based on the needs and experience of its clients. The clinic also provides public legal education to youth and youth-serving agencies.

Introduction

The work of the Canadian Foundation for Children, Youth and the Law through test cases, consultations and direct representation of young people in legal matters through the clinic, Justice for Children and Youth, forms the basis and context for our submissions to the Committee on the *UN Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography* (“*Protocol*”). We appreciate the opportunity to offer our submissions on the implementation of Canada’s international obligations to children and our recommendations for meeting these obligations in a more effective manner.

Canada must fully embrace a children’s rights perspective, with a corresponding commitment to accountability to Canada’s children through monitoring, enforcement and legislated mechanisms for full implementation of the *Protocol*. A strong commitment is needed to close existing gaps and remove barriers to provide both the protection of children from sexual exploitation, and services to those children who have been exploited, while ensuring it is done with full recognition of children’s rights and their dignity as human beings.

It is of utmost importance that children’s rights be strengthened through the political and legislative process, through concrete initiatives by government to honour

Canada's obligations to children under the *Protocol*. Because some of the failures in Canada to adequately support and protect children are within provincial jurisdiction, the government of Canada must find ways to engage the provinces and territories in meaningful co-operation to ensure adherence to our international treaty obligations.

Overall, Canada has a good record in this area and has been described as a world leader in preventing the sexual exploitation of children. Canada's recent initiatives (e.g., 1999 Children as Victims Project, 1999 reforms to the Extradition Act, 2000 amendments to the Criminal Records Act etc.) may provide a useful model for other countries.

Canada's child protection legislation and the Canadian Criminal Code prohibit the sexually exploitive use of children. The existing legislation was strengthened in 1997 with amendments to the Criminal Code (Bill C-27). The amendments allow for prosecution of persons who engage in child sex tourism in other countries, and facilitate the apprehension and prosecution of persons who seek out the services of child victims of sexual exploitation in Canada.

Nonetheless, NGOs have expressed concerns about sexually exploited children, particularly for street youth who are the most vulnerable, and for Aboriginal youth who in disproportionate numbers, end up in the sex trade as a means for survival. It is also estimated that thousands of women and children are brought against their will into Canada to work in the sex trade. While Canada has made great strides in ensuring legislation protects vulnerable children, some of the problems still facing children can be ameliorated by strengthening Canada's commitments under the *Protocol* to the benefit of children in Canada as well as those outside our borders.

Recommendations

Article 7

States Parties shall, subject to the provisions of their national law:

(a) Take measures to provide for the seizure and confiscation, as appropriate, of:

(i) Goods, such as materials, assets and other instrumentalities used to commit or facilitate offences under the present protocol;

(ii) Proceeds derived from such offences;

(b) Execute requests from another State Party for seizure or confiscation of goods or proceeds referred to in subparagraph (a);

(c) Take measures aimed at closing, on a temporary or definitive basis, premises used to commit such offences.

At the international level, child slave labor is a significantly greater problem than it is domestically. Canada, through CIDA's Social Development Priorities and the Child Development Action Plan, committed resources to work toward the ending of exploitive child labor. However, at the same time the government has failed to meaningfully address the exploitation of child slave labour by industries and corporations.

As child slavery comes to the forefront of global concerns, efforts to end it are growing. There are several conventions which prohibit child slavery, such as *Optional Protocol* as well ILO Convention 182, which defines child slavery - as the worst forms of child labor – including trafficking of children, forced/bonded labor, prostitution, combat, etc., and deems the enslavement of children illegal. Many non-governmental organizations (NGOs) are working to increase public awareness of child slavery, as a first step to ending it. However, to make effective progress, the poor economic conditions of developing countries, and the lack of free primary education, both of which foster slavery, must be addressed. In addition, all governments must take action to address the exploitation of child slaves by international corporations who benefit from the “cheap” labour which is employed in particular industries.

For example, it is well documented that the cocoa industry in West Africa is heavily dependent on child slavery. Desperate parents may sell their children for as little as \$50, believing that the children will earn wages that can be sent home to help support the family. Tragically, many children are paid nothing, live in squalid conditions, abused, and forced to do hard labour up to 100 hours a week. Recent reports by the International

Labour Organization (2001) as well as UNICEF (1998) have brought attention to the fact that low cocoa prices have resulted in the enslavement of thousands of children. Save the Children Canada alleges that despite commitments made by Canadian chocolate companies and the Canadian government to clean the cocoa supply chain from the worst forms of child labor, hundreds of thousands of children are still being exploited. Unfortunately, the 2001 Harkin-Engle Cocoa Protocol which would strive to end the worst abuses through certification, is voluntary, and therefore not legally enforceable.

It is estimated that over 312,000 children are being exploited in the cocoa farms of West Africa. “Since Canada imports cocoa beans from Côte d’Ivoire (Ivory Coast), we believe all Canadians have an obligation to respect, protect and fulfill these children’s rights,” said David Morley, President and CEO of Save the Children Canada, who has visited the cocoa farms in West Africa.¹

Certified fair trade chocolate is the only current guarantee consumers have that child slavery or forced labour is not involved. In Canada, as in other countries, you can find “Fair Trade Certification” on selected products. However, there is no requirement with respect to the labeling of chocolate coming into Canada, nor has there been a positive response to the continuous demands that only cocoa which is certified free of child slave labour be available for sale in Canada. In contrast, the Canadian government has played a leadership role in efforts to end the trade in conflict diamonds, motivated by both humanitarian concerns and a desire to protect the rapidly growing Canadian diamond industry, and has passed legislation to that end.

Recommendation 1

Canada should take a lead role both domestically, and on the international stage to protect children from enslavement, by prohibiting importation of products from industries, such as cocoa production, which have been consistently cited as egregious violators of anti-child slavery laws, unless those products have been certified free of child slavery or forced labour. It is hoped that this standard would spread to other countries and industries which profit from the enslavement of children.

¹ See Save the Children Canada website for background on Child Trafficking, Slavery, and Cocoa Production: <http://www.savethechildren.ca>

Article 9

1. States Parties shall adopt or strengthen, implement and disseminate laws, administrative measures, social policies and programmes to prevent the offences referred to in the present Protocol. Particular attention shall be given to protect children who are especially vulnerable to such practices.

Inadequate Child Protection Legislation

Experts estimate the average age of a young person entering into commercial sexual exploitation in Canada is 14 to 18 years.² There is no uniform age for child protection across Canada. For example, Ontario *Child and Family Services Act* defines a "child" who can be found to be in need of protection as a person who is "actually or apparently" under the age of sixteen. Other provinces vary from 16-19 years of age. This inconsistency is significant and is likely to have an adverse effect on youth. The *U.N. Convention on the Rights of the Child* and the *UN Optional Protocol to the Convention on the Rights of the Child* defines a child as a person under the age of 18. Therefore, provisions relating to the protection of children from abuse and neglect would seem to require that child welfare legislation consistently extend protection services to those under 18 years.

The lack of resources for 16 & 17 year olds in some provinces have left young people without viable alternatives when they have suffered from abuse or neglect. Furthermore, provincial legislation which outlaws "squeegeeing" and some other forms of panhandling, have left the same young people more vulnerable to commercial sexual exploitation. Young people aged 16 & 17 who are abused at home should not be required to fend for themselves financially. Some, dealing with the after-effects of abuse, are not ready to live without adult supervision; others who try to live as adults must either quit school and find an unskilled job, or meet stringent social assistance qualifications. Police records indicate that in 1999 there were 47,585 runaways entered on the RCMP CPIC (Canadian Police Information Centre) database. Estimates indicate that approximately 60% of street youth are those who have left home to escape an abusive family situation or neglectful parents. Of great concern to NGOs here is that of these, 58% were female and

² Subcommittee on Solicitation Laws of the House of Commons Standing Committee on Justice and Human Rights, *The challenge of Change: A Study of Canada's Criminal Prostitution Laws*. December 2006, p.10.

as such especially vulnerable to involvement in prostitution. Of equally great concern is that Aboriginal children are highly over-represented among children living on the streets. A Panel of Experts on Child Protection recommended in March, 1998 that young people aged 16 and 17 should be given access to the child protection system.³ Such an extension would, if appropriately funded, greatly assist Children's Aid Societies, schools, and above all, youth who want and need protection.

Even though children under the age of 16 in all provinces are legally entitled to be found in need of protection, a lack of effective services for teenagers has meant that their needs are not being met. Moving from group home to group home is common place for teenagers in care. As a result, many of these young people do not have a stable environment. The effects of transience on young people are long term. Lack of education as they bounce from school to school, as well as a lack of adult support, leaves them more vulnerable to commercial sexual exploitation.

Migrant Children

Children under 18 years of age who arrive in Canada as unaccompanied minors do not qualify for support services in all provinces. This discrepancy across the country makes it difficult for agencies which provide services for young people who arrive without a parent or guardian. Many of young people under 18 years will not qualify for any financial support and with limited education and language skills; they are particularly vulnerable to sexual exploitation.

Canada does not have a national policy on unaccompanied minors seeking asylum. There is a lack of adequate and consistent training for federal authorities on how to ensure that child migrants have not been victims or are not potential victims of sexual exploitation or forced labour within their country of origin.

³ *Protecting Vulnerable Children*, at pg. 53

Forced Marriages of Children

There are inadequate protections to prevent sexual exploitation or sale of Canadian children outside of Canada. There has not been adequate training of Canadian child welfare authorities or federal authorities with respect to young people who are sent out of Canada against their will, and to other countries for the purpose of marriage to which they have not consented, or under Canadian law do not have the ability to consent. Furthermore, commercial transactions, including the sale of children, form the basis for some of the marriages.⁴ Justice for Children and Youth has been contacted by young people under the age of 16 years who have been told that they will be repatriated to their country of origin, or their parent's country of origin, for the purpose of marriage. There are inadequate laws to prevent parents sending minor children to another country for exploitive purposes, and inadequate resources for the young people who have been "tricked" into or forced to travel to another country for the purposes of enforced marriage. Other countries, including the United Kingdom, have set up special offices in countries with a significant problem in child enforced marriages to help the victims repatriate to the U.K., thus far Canada has not followed suit.

In Canada, child brides have also been tolerated. Bountiful British Columbia has long been known as a community which openly practices polygamy, contrary to Canadian laws, but no one has ever been prosecuted. Furthermore, there are continuous reports of girls as young as 14 & 15 "married" to older men. Underage girls are taken out of school and expected to marry and bear multiple children for their much older husbands. Trafficking of children for marriage purposes across the Utah border to other polygamous sects has also been reported. Claiming that the children have "consented" to sexual relations has been the stated reason for not proceeding with charges. However, laws in Canada prohibit sex with anyone under the age of 18 where the person is in a position of trust or authority, in the case of Bountiful, not only are the men much older than the young girls, but some of the child marriages and sexual relations have been with the head of the polygamous sect of the Mormon church, and their community. These children have been raised isolated from the outside world in a closed community. This is an apparent violation of *Article 3 I(a)* of the *Protocol* ensuring that that the following

⁴ Statement by the Asian Human Rights Commission, July 18, 2007

acts and activities are fully covered under criminal law -“offering, delivering or accepting by whatever means, a child for the purpose of: sexual exploitation”.

Recommendation 2

- **Ensure that all children in Canada can access services and support under child welfare legislation up until the age of 18 years. Those services should be available to young people 16 & 17 years old on a voluntary basis, and should be consistent with the best interests of the child. More resources need to be allocated to provide effective services for young people in care.**
- **Canada should develop a national strategy on unaccompanied asylum-seeking children. A definition which defines child as someone under the age of 18 years of age, consistent with our international obligations. This strategy should include a consistent approach in how child welfare authorities approach vulnerable children, ensuring that they have access to education and health care as well as other services in a manner consistent with the best interests of the child. Ensure that unaccompanied persons under 18 years of age, who arrive in Canada and may be vulnerable to exploitation in their country of origin, are found in need of protection and offered asylum in Canada.**
- **Ensure that Canada’s laws against marriage without consent and marriage of children, is enforced both domestically and internationally. Adequate training of federal authorities on how to spot and refer vulnerable children to child welfare authorities. Resources must be provided to young persons who are sent out of the country against their will for the purposes of commercial and sexual exploitation.**

2. States Parties shall promote awareness in the public at large, including children, through information by all appropriate means, education and training, about the preventive measures and harmful effects of the offences referred to in the present Protocol. In fulfilling their obligations under this article, States Parties shall encourage the participation of the community and, in particular, children and child victims, in such information and education and training programmes, including at the international level.

There is a lack of information, and awareness about the *U.N. Convention on the Rights of the Child and the Protocol*. The majority of those who work in youth serving agencies in some provinces are not even aware of the existence of international laws

which protect children, or of the rights they affords children in Canada.⁵ Furthermore, information on the *Protocol* is not included in the curriculum of most school boards. Therefore, young people themselves are unaware of the rights afforded them under Canada's international treaties.

To meet *Protocol* obligations, and to promote the protection of children from exploitation, expanding awareness and increasing knowledge of the plight of children both at home and internationally, as well as providing information about children's rights under the *Protocol*, are necessary, especially among marginalized groups. Only when children and those who serve them, become aware of their rights and protections under the *Protocol*, can they effectively demand those rights be exercised for their benefit.

Recommendation 3

A comprehensive strategy is necessary to disseminate information about children's rights under the *Protocol* to decision makers, professionals, the general public, and in particular children.

3. States Parties shall take all feasible measures with the aim of ensuring all appropriate assistance to victims of such offences, including their full social reintegration and their full physical and psychological recovery.

Services for children who are victims of sexual and commercial exploitations must not only be readily available, but must also be delivered in a manner which respects the privacy rights of children. Some children who have been exploited wish to have that information kept private, even from their legal guardians. In some cases the guardian may even be the source of the exploitation. In some instances Canadian legislation ensures access to health care and counselling to all children and respects their privacy to the extent they have the capacity to understand the nature and consequences of treatment⁶, in some cases however, this does not apply to all service providers, such as

⁵ Christine Brennan, Office of the Ombudsman of Nova Scotia, submission to the Senate Standing Committee on *Effective Implementation of Canada's International Obligations with Respect to the Rights of Children*, April 2007.

⁶ *Health Care Consent Act*, 1996, S.O. 1996, c. 2.

social workers. There have only been a few court decisions dealing with the issue of consent to treatment for children, however, those cases support the standard of capacity based on the maturity of the particular child. Unfortunately, other legislation sets arbitrary ages for privacy protection to those seeking treatment and counselling. In particular, child welfare legislation may ensure that only young people above a particular age can have access to counselling without consent of their parents or guardians, and that age is not uniform across the country, varying from 12 years to 16 years.⁷

Furthermore, there may be health information that is obtained in circumstances that are neither treatment nor counselling, and therefore not covered by legislation. For example, simple requests for information may not be covered by privacy legislation. If this information is not deemed to be part of treatment or counselling, the young person may have no power to keep the information from a parent or other guardian. If the young person has not yet made a decision about treatment and has not yet participated in independent counselling, the young person may not have the power to keep health information confidential from a parent.

The confusion in having several pieces of legislation deal with issues of consent and privacy has resulted in inconsistent policies and procedures across the country with respect to the right of a young person to both access services and maintain privacy. The result is that young people are denied the very services which may aid in their rehabilitation and recovery. Furthermore, a low level of public awareness and a good deal of misinformation has led many young people to assume that they have no rights to privacy, and therefore, discouraged them from seeking treatment.

Recommendation 4

Children across Canada must be able to access all counselling and health services and information from all service providers, in a manner which respects their right to privacy, based on capacity to understand treatment and its consequences, rather than an arbitrary age. Canadians, and in particular children, must be taught about children's rights with respect to treatment and privacy.

⁷ For example in Ontario the age of consent for counseling is 12 years; for psychotropic drugs 16 years. (*Child & Family Services Act*, R.S.O. 1990, c. C.11, ss. 28, 132); in Saskatchewan a child is considered a "mature minor" for the purposes of consent at the age of 14; in New Brunswick 16 years.

4. States Parties shall ensure that all child victims of the offences described in the present Protocol have access to adequate procedures to seek, without discrimination, compensation for damages from those legally responsible.

The child's right to participate and to be heard is not only an important political right, but is also integral to ensuring equal access to justice. In civil actions young persons under 18 years of age are *non sui juris* and therefore require the power and guardianship of a "next friend" or "guardian *ad litem*" and are restrained against litigating in their own right. While the guardian does not replace the young person they instruct counsel and are generally accountable to the court. Therefore, there is no requirement that the courts hear directly from the young person. In the case of sexual victimization, keeping a child out of the legal process has been found contrary to child's well being and therefore best interests of the child.⁸ Further difficulty arises because the guardian is held responsible for indemnification of the other party's legal expenses

Equally important to access justice is the availability of counsel. Young persons who wish to take civil action against those who are legally responsible, are not able to access free legal services in many provinces in Canada. Further, in provinces that do offer legal aid, it may only be available in cases where institutions, not individuals, may be liable.

Recommendation 5

Children must be able to avail themselves of free legal services in all parts of Canada in order to exercise their right to seek legal compensation from those who victimized them. Further, they must be informed of that right.

Conclusion

⁸ M. Wells, "Court as a Catalyst for Treatment", unpublished 1985; and the Standing Committee on Justice and the Solicitor General, "Four Year Review of the Child Sexual Abuse Provisions of the Criminal Code and the Canada Evidence Act" (Formerly Bill C-15)

Children who are abused or exploited are unlikely to develop to their full potential, and their capacity for inclusion in community school and family is compromised by a lack of psychological or physical well-being. The effects of abuse or exploitation are well-documented. Sexual exploitation is associated with a host of behavioural, social and academic difficulties that in turn are linked with characteristics of social exclusion - early school leaving and early pregnancy, alcohol abuse, unemployment, street violence, juvenile offending, poverty and homelessness.⁹ Those living in such adverse circumstances typically feel powerless and vulnerable.

It is strongly recommended that services be systematically available to treat the serious and persistent physical, psychological and emotional difficulties experienced by child victims of sexual exploitation, and that young people exploited in the sex trade in all provinces be treated under child welfare rather than criminal legislation. More resources must also be allocated to track the illegal traffic of children from other countries into and through Canada. In addition, special emphasis needs to be given to enable Aboriginal youth to re-establish cultural connections and find strength in their heritage. Education, proactive policies and practices, that respect every child's right to be free from slavery and sexual exploitation are fundamental to ensuring a greater level of success in improving the lives of children.

Enhanced levels of accountability through time-bound and measurable systems are necessary to ensure the development of concrete strategies. It is the hope of Justice for Children and Youth that this will help alleviate both the conditions which increase vulnerability to sexual and commercial exploitation, as well as provide adequate services to children who have been victims of exploitation.

⁹ Gelles, 1996; National Crime Prevention Council, 1995