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Produced and compiled by the Organization for the Protection of Children's Rights, Mumbai
76 Sabarigiri,
Anushaktinagar,
Mumbai 400 094,
India
Tel: 25506046
Email: roshni@vsnl.net

Head Office

5167 Jean-Talon,
Suite 370
Montreal, Quebec,
Canada
H1S 1K8
Tel: (514) 593-4303
Fax: (514) 593-4659
Email: pfischer@osde.ca

Editorial Team:

Riccardo Di Done
Pascal Fischer
Roshni Udyavar

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Children Speak

Vol 2, No.6, August - September '04

A Newsletter of the Organization for the Protection of Children's Rights

Message from the President

Highly industrialized countries admittedly have some of the best programs and laws in the world to protect their children. All, with the notable exception of the United States, have also signed the Convention on the Rights of the Child (CRC). Yet our children and youth remain the most under-represented and vulnerable segment of our societies, subject to violence, abuse, abduction and various forms of exploitation, lacking sufficient protection in basic areas such as education and health care.



Riccardo Di Done

Children in the United States suffer from some of the highest rates of poverty, hunger and infant mortality in the industrialized world. Three American children die every day due to abuse and neglect, and nearly three quarters of all the murders of children in the industrialized world occur in the United States. Twenty-two U.S. states allow executions of juvenile offenders (youth aged 16-17 yrs.).¹

Nearly 1 million children still live in poverty in Canada.² Of all emergency food recipients each month throughout Canada, 39% or 306,552 are children under 18 years of age.³ Children represent a substantial portion of Canada's homeless population and few legal provisions exist for street children who are over the age of 14 years.⁴ The best interests of the child is still not adequately defined and reflected in some legislation, court decisions and policies affecting certain children, especially those facing situations of divorce, custody and deportation, as well as Aboriginal children. The number of youths in custody in Canada is among the highest in the industrialized world.⁵

Obviously, a lot of work still needs to be done, commitments made and measures implemented before children and youth enjoy the same legal and social protection as adults do in the industrialized world. Together, we can and must make the difference! □

(1 U.S. Fund for UNICEF Action Alert. Support U.S. Ratification of the United Nations Convention on the Rights of the Child <http://capwiz.com/unicefusa/issues/alert/?alertid=32697> 2 Honouring Our Promises - Meeting the Challenge to End Child and Family Poverty. 2003 Report Card on Child Poverty in Canada. Campaign 2000.3 HungerCount 2003. The Canadian Association of Food Bank. October 2003.4 How Does Canada Measure Up? 2003 Update, CRC Session 34, 15 September - 03 October 2003 - Canadian Coalition for the Rights of Children.5 Committee on the Rights of the Child, Thirty-fourth session, Consideration of reports submitted by States Parties under Article 44 of the Convention, Concluding observations: Canada, CRC/C/15/Add.215, 27 October 2003.)



Protecting Children Globally

FACTS FROM UNICEF

- More than 1 million children worldwide are living in detention as a result of being in conflict with the law. In Central and Eastern Europe alone, about 1.5 million children were living in public care at the end of the 1990s;
- About 14 million children under 15 are estimated to have been orphaned as a result of AIDS alone;
- Approximately 246 million children work, with about 180 million engaged in the worst forms of child labour;
- An estimated 1.2 million children are trafficked every year;
- Two million children are believed to be exploited through prostitution and pornography;
- At any given time over 300,000 child soldiers, some as young as eight, are exploited in armed conflicts in over 30 countries. More than 2 million children are estimated to have died as a direct result of armed conflicts during the 1990s;
- An estimated 100 million to 130 million women and girls alive today have undergone some form of genital mutilation/cutting;
- Forty million children below the age of 15 suffer from abuse and neglect, and require health and social care.



BUILDING A PROTECTIVE ENVIRONMENT FOR CHILDREN

Children are entitled to grow up in an environment that protects them. UNICEF identifies and responds to eight key aspects of a protective environment:

- | | | |
|--|---|---|
| <ul style="list-style-type: none">● Changing attitudes, traditions, customs, behaviour and practices which do not respect the basic rights of children● Building governmental commitment to fulfilling protection rights● Building advocacy on child protection issues through partnerships among actors at all levels including children themselves | <ul style="list-style-type: none">● Creating adequate legislation, accountability and enforcement● Capacity- building of NGOs, health workers, teachers, police and social workers working towards child protection● Equipping children with life skills, knowledge and participation in legal issues related to their rights● Setting up a monitoring and reporting system to | <ul style="list-style-type: none">record the incidence and nature of child abuse● Providing services for recovery and reintegration of child victims of all forms <p>Some elements of the protective environment will overlap. For example, governmental commitment may dictate whether services for victims of abuse are provided, or whether investment is made in monitoring mechanisms. Similarly, media attention can be a key factor in influencing attitudes. □</p> |
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(UNICEF)

The Rights of Children of Separated / Divorced Parents in Canada

Canada is one of the 191 United Nations affiliated countries to have signed the Convention on the Rights of the Child (CRC) in 1989.

With respect to divorce/separation of parents, these rights include: taking into account the child's best interests (article 3); respect for the role of parents in the child's life (article 5); non separation of parents from child and respect for the right of the child *to maintain personal relations and direct contact with both parents on a regular basis*, except if contrary to the child's best interests (article 9); taking into account the child's opinion, where old enough, and the opportunity for the child to be heard in judicial or administrative proceedings affecting the child (article 12); and recognition of the *common responsibilities of both parents* for the upbringing and development of the child (article 18).

In the years following ratification of the Convention, many Federal and Provincial legislations governing divorce, separation, child support and custody and access in Canada have been gradually amended and/or reformed to incorporate the best interests of the child as guiding principle. This article probes whether these legislations are consistent with the rights set forth in the Convention and actually integrate provisions to ensure that these rights are respected.

First, Canadian Federal legislation as it stands today does not sufficiently recognize the simple physical fact that children do have two parents and that it is in the best interests of the child to benefit

Access battles between parents focus on their needs instead of on the needs of their children and their obligations to them. Such a system benefits no one, least of all children

from joint parenting. As a result, the overwhelming majority of children (81%) live only with their mother at the time of separation. Even where there is a court order for shared custody (in about 13 % of cases), children are still more likely (76%) to live with their mothers, while 15 % lived with their fathers. In only 9 % of cases is the living arrangement "equally shared" between the parents.¹ The absence of such a provision reflects a profound ambivalence and refusal to establish the point at which the rights of parents as individuals should be counterweighted or give way to their responsibilities toward their children's well-being and rights. The Canadian legal system does not clearly and unequivocally emphasize parental responsibilities rather than parental rights. As a result, neither the parents nor the child's rights are fully protected under current laws, leaving the door open to many injustices and abuses. A poignant and compelling example is provided in the book *Please don't let me go Papa!* recently published by OPCR President Riccardo Di Done.

In the same way that two neighbours might contest each other's claims over a tract of land for which there are no clear frontiers, children become embroiled in custody and access battles between parents who focus on their needs

(which they take for rights) instead of on the needs of their children and their obligations towards them. Such a system benefits no one, least of all children.

Second, current divorce and custody and access proceedings also fail to take into account the considerable empirical evidence on the short and long-term negative consequences of marital dissolution and divorce proceedings indicating a significant difference between children from divorced and intact families on various indices of well-being, such as academic success, parent-child relationships and emotional and behavioural adjustment, to name but a few.

Third, that of all the things that detrimentally affect children, continued parental conflict before, during and after separation or divorce, particularly if focused on the child, is the most damaging; and that the Canadian judicial system, which is an adversarial process that encourages parents to litigate their differences instead of resolving them, exacerbates this form of parental conflict. Moreover, parental conflict presents a dysfunctional role model in which children learn that disagreements can be solved only by fighting.

Fourth, children's participation in legal proceedings, such as in areas of child protection and custody and access for example, are limited and discretionary. In most jurisdictions, legislation does not require that the wishes of the child be part of the determination of the child's best interests, in contradiction

Continued on Page 5

Malnutrition Deaths in Maharashtra

The tragic news of child deaths due to malnourishment in one of the most prosperous states of India came as a shock to citizens. Research conducted by the Maharashtra State Tribal Research Institute indicated that as many as 97 percent of children in the five tribal districts of Maharashtra suffer from malnutrition. Figures submitted by the State to the recently conducted Census Report show that 1,020 children died of malnutrition in these districts, with as many as 29% on the verge of death.

In its defense, the Maharashtra State government claims that the Infant Mortality Rate (IMR) is better than the national average of 64 infants per 100 live births and has, in fact, dropped from 55 infant deaths per 1000 in 1994-95 to 44 in 2003. A spokesperson from the Tribal Research Institute, however, clarified that the mortality rate for children under 5 years of age in the tribal areas is 92.3 for 1000 live births, much higher than the Maharashtra average, essentially implying that nine out of 100 tribal children die before reaching the age of five years. Moreover, the findings of the Tribal Research Institute are confirmed by a 2-year survey conducted by the organization SEARCH, which found that nearly 70 % of infant deaths in the state go unrecorded.

The major causes for such a tragedy, says Dionne Bunsha of Frontline, is the lack of availability of Public Health Services in remote and interior regions of the State, the declining state expenditure on Public Health and the lack of

awareness on preventive child health care. Says Ravi Duggal from CEHAT (Center for Enquiry into Health and Allied Themes): "Health expenditure fell from one percent of State Domestic Product (SDP) in 1980s to 0.6 percent in 1998 - 99. As a result, expenses have tripled for inpatient care and almost doubled for



Timkabai Sarave from Kira village with her ten month old malnourished child

NEWS...

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outpatient care during the period 1986 - 87 to 95 - 96. Despite schemes such as the Integrated Child Development Scheme (ICDS), which are meant to provide basic nutrition to children from below poverty line families, it is estimated that around 35 % of the children who are eligible to receive food under this scheme do not receive it.

The underlying cause for the continuing loss of innocent lives is the abject poverty and exploitation of tribals, whose main source of sustenance, forests are under increasing pressure of development. Tribal people, who have been living in harmony with nature for ages, are now restricted from forested areas while the logging contractors in connivance with the Forest Department indulge in large scale deforestation.

Nandurbar has now become synonymous with malnourished and starving children. Yet, a peek into the underlying causes of the tragedy reveals a trail of poverty and exploitation coupled with distorted government policies that fail to address the fundamental needs of its people. It is time we realized that Nandurbar and other such districts are only symptoms of a deeper malignancy. □

Continued from Page 3

Children Rights in Canada

to the fundamental obligation under the Convention that children be heard in all matters affecting them.

Finally, most, if not all programs and policies determined to be conducive to the best interests and well-being of children, such as family mediation, are of a non-judiciary nature. Unfortunately, these mechanisms are considered as support services to the court whereas they should be viewed as psychosocial services designed to help spouses resolve their conflicts *before* divorce/separation proceedings are even instituted. In effect, these services are integrated and subordinated to a legal framework, which, as we have seen, does not sufficiently recognize the concept of joint parental responsibilities and the importance of maintaining relationships between children and their parents and extended family members, thereby severely limiting the effectiveness of said services.

In conclusion, while adhering in principle to the Convention and making laudable efforts to adapt its laws accordingly, Canada has yet to fully recognize and integrate the rights of children into its social and legal structure. This situation is not exclusive to Canada, as many countries are also grappling with the difficulty of balancing children's rights and duties with those of parents and that of resolving contradictions between the Convention and national laws and practices. □

*This text is based on the Brief on Bill C-22 (Divorce Act) presented to the Standing Committee on Justice and Human Rights in August 2003 by the OPCR, which can be consulted/downloaded from the OPCR website at <http://www.osde.ca/english/projects.htm>.¹ Department of Justice Canada (2002). *Children Come First: A Report to Parliament Reviewing the Provisions and Operation of the Federal Child Support Guidelines (Volumes 1 and 2)*. Ottawa: Department of Justice Canada (Cat. J2 - 186/ 2002- 1E and J2- 186/ 2002-2E)*

Legal Protection for Children

By Justice H. Suresh



A large majority of street children in Mumbai are between 9 and 18 years of age and have managed their survival for more than 5 years

The Indian Constitution provides legal protection to children through a number of enactments which include the Children (Pledging of Labor) Act, 1933; the Beedi and Cigar Workers (Conditions of Employment) Act, 1966; the Factories Act, 1948; the Plantation Labor Act, 1951; the Mines Act, 1952; the Bonded Labor System (Abolition) Act 1976 and the comprehensive Child Labor (Prohibition and Regulation) Act, 1986. These acts are meant to protect children from exploitation by means of labor or bondage.

The Juvenile Justice Act, 1986, (a Central government act drafted on the basis of the Convention on the Rights of the Child, 1989, last amended in 2001), is the most comprehensive act for child protection for, among others, destitute and street children. On 16 October 2003, in response to a writ petition filed in 1996 by Christ Periera, the Bombay High Court ordered the formation of an Independent Committee: the Maharashtra State Monitoring Committee on Juvenile Justice. The Committee consists of voluntary members nominated by the High Court including retired High Court judges, child rights experts and advocates. It monitors the functioning of orphanages, children homes and other such facilities for

destitute children. The Committee reports to the State Government and in case of inaction by its officials, it moves to the High Court.

In the six months of its existence, the Committee's reports have indicated child abuse, lack of hygiene and proper management of food and clothing, as a common element among most destitute homes in Mumbai. These homes, are, in fact, issued license by the government only after the minimum norms are met with. Many NGOs aid the Committee by informing them about malpractices such as the recent case where an orphanage run in Colaba, Mumbai by a UK concern was found to be, in fact, a center where innocent migrant children were lured into pornography and sexual abuse. The High Court has ordered the orphanage to be shut down following a report by the Committee even as a warrant has been taken against the absconding owner. By being able to directly exert pressure on the government through the High Court, the Committee hopes that it will be able to arrest abuse of street children in the long run. □

The Author is a retired Bombay High Court Judge and Chairperson, State Monitoring Committee on Juvenile Justice

WORLD BREASTFEEDING WEEK

1-7 August

In 2002, WHO and UNICEF launched a Global Strategy for Infant and Young Child Feeding which calls upon all governments and other actors:

“to ensure that all health and other relevant sectors protect, promote and support exclusive breastfeeding for six months and continued breastfeeding up to two years of age or beyond, while providing women access to the support that they require – in the family, the community and the workplace – to achieve this goal”.

This year’s WBW aims to stimulate activity worldwide to get more people to understand the importance of exclusive breastfeeding and to think of ways to enable mothers to do it.

The context for this is the new Global Strategy which many people are beginning to implement.

World breast feeding week is being observed all over the world now by various organizations, many of them working under a coalition called the World Alliance for Breastfeeding Association (WABA).

In India, the initiative is lead by the Association for Consumers Action on Safety and Health (ACASH), an independent, non-profit, voluntary organization addressing health- related consumer issues and advocating for the rights of



EVENTS

the consumers and the general public. Founded by a group of doctors, lawyers and other concerned individuals in 1986, the organization serves as an information center to educate, guide and disseminate information in the field of health and safety issues.

Incidentally, the organization has been appointed by the Government of India, Ministry of Human Resources Development (Department of Women and Child Development), as per gazette notification GSR 540(E) to monitor and report violations of the “Infant Milk Substitutes, Feeding Bottles and Infant Foods (Regulation of Production, Supply and Distribution) Act, 1992”.

The organization has been successful in many Public Interest Litigations against gross violations of the Infant Milk Substitutes, Feeding Bottles and Infant Foods Act, 1992.

The WBW aims to reinstate breastfeeding as an integral part of women’s reproductive cycle and health, to create awareness of women’s rights to humane and dignified birthing practices and to promote the Global Initiative on Mother Support (GIMS), as a means to strengthen the multitude of ways in supporting breastfeeding. □

(World Alliance for Breastfeeding Action and ACASH, Mumbai)



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5167 Jean-Talon East, Suite 370, St-Leonard (Quebec), Canada H1S 1K8

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