

From Rhetoric to Reality

EXECUTIVE SUMMARY

Canada is signatory to a variety of international legal instruments which speak to the rights of the immigrant and refugee girl child in Canada. The extent to which Canada is legally bound by such instruments and the enforceability thereof, is controversial at the level of actual implementation.

This paper examines Canada's obligations to the immigrant and refugee girl child as defined in specific international instruments,⁽¹⁾ in a number of areas. It also examines domestic and international legal barriers to their enforcement. It contrasts the rhetoric of applicable human rights instruments to the lived experiences of the immigrant and refugee girl child in Canada. Overall, despite legislation, programming and services designed to ameliorate conditions, the immigrant and refugee girl child in Canada continues to face racism, sexism, ageism and violence in her home, at school and on Canadian streets.

The following are areas of concern that have emerged from the literature concerning the immigrant and refugee girl child.

Poverty

Recent reports indicate that child poverty in Canada has increased 49% since 1989, and that Aboriginal and visible minority children are faring the worst.

Trafficking and Sexual Exploitation of Children

Despite the efforts of the United Nations and Canadian government the girl child continues to be the victim of trafficking and sexual exploitation both internationally and domestically. Due to factors such as previous exposure to violence, poverty, low self-esteem and the adversity of a racist and sexist Canadian society, immigrant and refugee girl children are particularly vulnerable to this type of exploitation.

Violence

The immigrant and refugee girl child continues to experience violence in her home, at school and on Canadian streets. The marginalizing effects of her social location make her an exceptionally vulnerable target for many types of violence.

Racism

In 1996, 24.3% of the visible minority population was under the age of 15, and *the majority of these youth were immigrants*. For many immigrant and refugee girl children racism is a key factor in their experiences of marginalization.

At the level of the individual girl child the interaction of racism and sexism may deeply effect their sense of self, their self-esteem and their ability to negotiate the strains of living between two cultures.

MEDIA INFLUENCE AND LITERACY

The use of racial and cultural stereotypes in television and film media has been noted as having a negative effect on the self-image and peer acceptance of immigrant and refugee youth.

EDUCATION

As with most children, school is the focal point of many immigrant and refugee girls' existence. School, especially high school, can be a daunting experience for the most prepared and advantaged child. The immigrant and refugee girl child faces the added effects of a new country, new friends, a new language, and the loss of her home country.

SERVICES

The accessibility and availability of services are important issues for all Canadians. The immigrant and refugee girl child faces numerous and unique challenges in her development and therefore, the provision of adequate services is a vital link to her survival. There are numerous failings in service provisions to immigrant and refugee girls.

THE REFUGEE GIRL

In order to be accepted into Canada as a refugee the refugee girl child must have a "well founded fear of persecution." Simply by meeting this legal test, the refugee girl is much more likely than the immigrant girl to have experienced or witnessed violence, war, or government policies which foster violence against women.

CONCLUSION

Virtually every one of the barriers encountered by immigrant and refugee girls in Canada is the subject of an international instrument which purports to eliminate or prohibit it. There is a serious gap between the progressive rhetoric of international human rights instruments, and the lived experiences of racism, sexism, and poverty of the immigrant and refugee girl child in Canada.

Endnote:

¹ These instruments include: *The Convention on the Status of Refugees*; *The Convention on the Elimination of All Forms of Discrimination Against Women (1981) (CEDAW)*; *The Convention on the Rights of the Child (1989) (CRC)*; *Convention on the Elimination of All Forms of Racial Discrimination (1965) (CERD)*; *Supplementary Convention on the Abolition of Slavery, the Slave Trade and Institutions and Practices Similar to Slavery (1956) (Slavery Convention)*; *International Covenant on Economic, Social and Cultural Rights (1966) (ECOSOC)*; *International Covenant on Civil and Political Rights (1966) (ICCPR)*; *Universal Declaration of Human Rights (1948)*; *Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (1987) (CAT)*; *The Beijing Declaration and Platform for Action (1997)*; *1993 Vienna Declaration and Programme of Action (1993)*; and *The Declaration and Agenda for Action Formulated at the World Congress Against Commercial Sexual Exploitation of Children (1996)*.

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*From Rhetoric to Reality***I. INTRODUCTION**

Female children⁽²⁾ make up a substantial proportion of those who immigrate or seek refugee status in Canada each year. One of every ten immigrants landed in Canada in 1998 was a girl under 15 (Canada, Citizenship and Immigration, 1998:10, 53-54). In 1996, immigrants made up 17.4 percent of Canada's population (Canada, Statistics Canada, 1997). Most of the world's refugees are female. (Kelson, 1997:2)

The immigrant or refugee girl child⁽³⁾ then is a presence within Canada and British Columbia. At the rhetorical level the immigrant and refugee girl child also takes a special place on the world stage in a number of international instruments to which Canada is either signatory or is, arguably, otherwise bound to uphold. As this paper will show, however, Canadian rhetoric at the international level does not match the lived experiences of racism and poverty of immigrant and refugee girl children living within Canada. Canadian legislation, policies, provision of services and common law does little to mediate this experience. The immigrant and refugee girl child lives at the intersection of multiple forms of oppression. This paper will begin to explore these multiple oppressions within the context of Canada's international obligations to the immigrant and refugee girl child living in Canada.

Following a brief introduction of the immigrant and refugee girl child, this paper will examine Canada's obligations to her under international human rights instruments.⁽⁴⁾ This will be followed by a series of comparisons between the language of these instruments and the lived experiences of the immigrant and refugee girl child in Canada. These comparisons are organized around themes which emerge from the literature in various areas, and utilize recent Canadian and American research. Several thematic sections include references to selected Canadian legislation, policy, programming or case law which attempts to mediate between international rhetoric and the lived experiences of the immigrant and refugee girl child in Canada.

Endnotes:

² I use the term "child" to refer to those aged 19 and under. In British Columbia the legal age of adulthood is in most cases 19.

³ Hereinafter "immigrant and refugee girl child" refers to that population specifically. Other references to the 'girl child' refer to all female children, unless otherwise specified. Often statistics or studies do not break down findings along the lines of immigration status.

⁴ Many feminist commentators have critiqued the use of "rights" as they are constructed by the United Nations, a male-dominated organization. We recognize the complexities of "rights speech," and acknowledge the pitfalls it contains. This paper will focus on the rights of the girl child as they are articulated by United Nations documents. Despite the underlying problems, the construction of rights is ONE framework within which we must advocate. With the approach of the World Conference on Racism Conference, and the impending ratification of the Optional Protocol of CEDAW, we feel it is important to emphasize the work to be done in this particular arena. We also feel that CEDAW itself has come some distance in articulating women-centred, woman-constructed rights. See for instance: Charlesworth, H. "What are 'Women's International Human Rights?'" in *Human Rights of Women: National and International*, Karen Knop, "Feminist and State Sovereignty in International Law" 3 *Transnational Law and Contemporary Problems*, 1993, 293.

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II. AT THE INTERSECTION OF AGE, RACE AND GENDER: THE UNIQUELY VULNERABLE IMMIGRANT AND REFUGEE GIRL CHILD

Violence against women and children is a widespread phenomenon, crossing cultural, age, class and national barriers. Immigrant and refugee girl children find themselves at the crux of race, class, age and gender; converging factors which make them particularly vulnerable to violence in societies rife with sexism, racism, and ageism. Throughout the paper this intersecting of oppressions will be expressed as the immigrant and refugee girl child's "social location." This term illustrates not only the mapping of intersecting oppression, but also speaks to the hierarchical nature of Canadian society.

Both internationally and domestically, due to her social location the immigrant and refugee girl child faces unique barriers to social, economic, spiritual, physical, emotional and intellectual fulfillment. In 1993, the Executive Committee of the United Nations High Commissioner for Refugees officially recognized the precarious position of the refugee girl child:

Refugee girls are often even more vulnerable than refugee boys. In some cultural and social contexts, girls are less valued than boys and, consequently, are more often subject to neglect and abuse. Their participation in education programs is often prematurely curtailed. They are subject to sexual abuse, assault and exploitation in greater numbers than are boys.
(UNHCR Policy on Refugee Children, 1993)

More broadly, these same social locators place the immigrant and refugee girl child at greater risk for all forms of discrimination and human rights violation. *The Beijing Declaration and Platform for Action* (Beijing Declaration and Platform for Action, 1995:par. 1 and 32) explicitly notes the role of intersecting oppressions in creating multiple barriers to the girl child:

1. We, the Governments participating in the Forth World Conference on Women;

...

2. [Are determined to] Intensify efforts to ensure equal enjoyment of all human rights and fundamental freedoms for all women and girls who face multiple barriers to their empowerment and advancement because of such factors as their race, age, language, ethnicity, culture, religion, or disability, or because they are indigenous people;

This paper will take a holistic approach to understanding the immigrant and refugee girl child's lived experiences within Canada. By using her social, political, legal and educational experiences this paper will illustrate Canada's failure to implement legislation, policies and programs which meaningfully embody the human rights of the immigrant and refugee girl child as articulated in international instruments.

In examining immigrant and refugee girl children as members of a marginalized group we must be cautious of essentializing or collapsing their diversity of experiences. It has been asserted, however, that "...at the core of the diversity of experiences that shapes the lives and realities of girls from marginalized groups is the intensity of rejection and exclusion mediated by mainstream society" (Jiwani, 1999a:25). I hope to get at a "core of experience" by drawing out emerging themes of vulnerability as articulated by immigrant and refugee girl children themselves, front line service

providers, and recent research and literature.

Much of the literature in this area tends to frame the inquiry around the immigrant and refugee girl child in terms of her victimization. Her extreme vulnerability to racism, sexism and ageism structured by her social location make this a valid framework of examination. This paradigm, however, tends to discount the agency of the immigrant and refugee girl child - her resilience, successes and adaptability in the face of adverse circumstances. The weight of the literature reviewed in this area is reflected in this paper, however we wish to recognize the agency of the immigrant and refugee girl child at the outset.

These themes **are not** watertight compartments, but reflect facets of the experience of marginalization of the immigrant and refugee girl child.

The following are themes which emerge from a review of the literature on the girl child in Canada, and which will be examined in detail below: a general lack of gendered and age-specific data; poverty; trafficking and sexual exploitation of children; violence; racism; media influence and literacy; education; services; and the unique position of the refugee girl child.

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III. CANADA'S OBLIGATIONS TO THE GIRL CHILD UNDER INTERNATIONAL LAW

At the international level Canada is bound by international "law." There are several forms of international "law" including treaties and customary law, both will be discussed below.⁽⁵⁾

TREATIES

Not every document generated by an international conference or United Nations body can be considered "law." Treaties,⁽⁶⁾ however, are binding on the parties which become signatory to them (Malanczuk, 1999). Treaties are agreements entered into by states (often multilateral) which, in the human rights realm, articulate the rights of those individuals specified within the treaty. There are a number of treaties to which Canada is signatory which speak to the legal rights of the immigrant and refugee girl child. Canada is bound by the provisions of *The Convention on the Status of Refugees* (Convention on the Status of Refugees, 1951 and the Protocol Relating to the Status of Refugees, 1967) (*Refugee Convention*), *The Convention on the Elimination of All Forms of Discrimination Against Women* (1981) (*CEDAW*), *The Convention on the Rights of the Child* (1989) (*CRC*),⁽⁷⁾ all of which impact upon the rights of the immigrant and refugee girl child. None of these treaties specifically refer to the immigrant and refugee girl child, however they do articulate the rights of certain groups of people which include her,⁽⁸⁾ and also protect against rights violations to which she is particularly vulnerable such as sexual exploitation and gender inequality in education and health care.⁽⁹⁾

Beyond these three core treaties Canada is also bound by other treaties which may be cited as articulating some right of, or state obligation to the immigrant and refugee girl child. The application of these conventions to rights of the immigrant and refugee girl child in Canada is more oblique than the three conventions noted above as they are not necessarily gender specific nor designed to eliminate human rights violations to which the girl child is particularly vulnerable. These include the:

Convention on the Elimination of All Forms of Racial Discrimination (1965) (*CERD*), *Supplementary Convention on the Abolition of Slavery, the Slave Trade and Institutions and Practices Similar to Slavery* (1956) (*Slavery Convention*), *International Covenant on Economic, Social and Cultural Rights* (1966) (*ECOSOC*), *International Covenant on Civil and Political Rights* (1966) (*ICCPR*), *Universal Declaration of Human Rights* (1948)⁽¹⁰⁾ and *Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* (1987) (*CAT*).

Several arguments have been made regarding the applicability of these treaties to the immigrant and refugee girl child, as none refer specifically to her. First, although these conventions may not be age and/or gender specific, it has been argued that Canada has failed to implement them altogether, "...such that girls, boys, women and men are all inadequately protected..." (Sokhansanj, 2000:3-4), therefore a general push to implement the protections mandated in the conventions would benefit the girl child as part of the larger group affected by its implementation.

Second, while the rights protected in these conventions may appear to be neutral, it has been asserted that measures which create substantive rather than formal equality are necessary to see their true implementation (Sokhansanj, 2000:5; Charlesworth, 1994:58). Even if treaty rights *seem* to be implemented on their face it may take extra special steps to truly implement the rights as articulated

in the conventions of those who are made more vulnerable to rights violations by factors such as race, age, gender, sexual orientation or disability. The United Nations Human Rights Committee has emphasized that "enjoyment of rights and freedoms on an equal footing ... does not mean identical treatment in every instance" (United Nations Commissioner for Human Rights, 1998).

NON-TREATY INSTRUMENTS

Beyond the treaty there are numerous international instruments which speak to the human rights of the immigrant and refugee girl child. Documents such as resolutions, guidelines, declarations, plans of action, results of international conferences or statements from United Nations bodies, while not *prima facie* "law," have an important role to play in defining the rights of the immigrant and refugee girl child in Canada.

Although often seen purely as articulations of aspirations, these instruments *may* become accepted as customary international law,⁽¹¹⁾ or due to their persuasive power over states that participate in their drafting, become "soft law."⁽¹²⁾ "Soft law" may affect the way states interact with one another, or, in laying out emerging international norms, form the basis for future international law (Kindred, 1993:78).

Regardless of their formal legal status these instruments provide parameters and norms which, at a minimum, give us interpretive standards by which to measure Canada's protection of the girl child. Three examples of such documents which may inform the rights of the immigrant and refugee girl child in Canada are: *The Beijing Declaration and Platform for Action* (1997),⁽¹³⁾ *the 1993 Vienna Declaration and Programme of Action* (1993), and *the Declaration and Agenda for Action Formulated at the World Congress Against Commercial Sexual Exploitation of Children* (1996).

ENFORCEMENT

International Enforcement

Although Canada is bound by both treaty and customary law, enforcement mechanisms between states or by the United Nations are minimal, and are usually limited to the "droit de regard" in cases of human rights instruments. The "droit de regard" consists of the United Nations practice of investigation, discussion and condemnation of human rights violations - essentially an international shaming process. This process is facilitated by reporting requirements included in most treaties which mandate those states which have ratified a particular treaty to report periodically on what they have done to further the implementation of that treaty. Most conventions also create a United Nations Committee which collects, reads and replies to states' reports with critiques and suggestions. This reporting mechanism, aside from being able to provide only strongly-worded recommendations, also has shortcomings on the administrative and funding side.

For example committee reporting has proved inadequate in the context of *CEDAW*, the most recent and far-reaching instrument addressing women's rights internationally. Although *CEDAW* creates a Committee to receive and review reports, it faces special challenges within the United Nations system. The *CEDAW* Committee receives less funding, and is scheduled to meet less frequently than any other United Nations committee charged with the same responsibilities. (Bayefsky, 1994:352; Charlesworth, 1994:59; Ulrich, 2000:644). *CEDAW* itself also has the highest number of reservations of any United Nations Convention.⁽¹⁴⁾

Other UN Committees have more elaborate mechanisms for informing themselves of potential rights violations. For instance the Committee which administers the *ECOSOC* can formally receive written submissions from nongovernmental organizations (NGOs), holds annual "general discussions" on

rights as well as assigned meeting times, and can involve "recognized experts" to provide oral testimony during these discussions (Cook, 1994:25). To deal with the backlog of work and research, the ECOSOC Committee has requested a specialized agency to aid in its work, with a focus on collecting statistics on violence against women from non-State sources (Cook, 1994:26).

One result of this administrative inequity is a backlog in reading and responding to States' reports outlining their compliance with *CEDAW*, which must be filed every four years. Due to the backlog, States have begun to file late reports. Canada's next *CEDAW* report is already overdue (Bazilli, 2000:13). This seriously weakens already inadequate enforcement mechanisms by delaying or eliminating public censure for rights violations.

The most weighted portion of the Committees' response to States' individual reports is the "Concluding Comments" or "Concluding Observations." In this portion the Committee in question outlines concerns, recommendations for action, and points upon which they wish to see further reporting. After reviewing Canada's last *CEDAW* report as well as "shadow" reports filed by NGOs,⁽¹⁵⁾ the Committee pointed out the "discrepancy between Canada's positive role at the international level in promoting human rights of women, and the domestic policies that reinforce the erosion of women's social and economic rights with in Canada *and elsewhere*" (Bazilli, 2000:13).

Obstacles such as state sovereignty, variable forms of implementation between human rights treaties, and the debate around whether treaties constitute "self-contained" (but very weak) "law" create barriers to stronger remedies in most cases (Kindred, 1993:220-221). Several international human rights instruments, however, have adopted an Optional Protocol. An Optional Protocol is an instrument which creates a complaints procedure, and an inquiry procedure by which a UN Committee may hear individual complaints, or begin their own investigations into human rights abuses. The Committee then provides recommendations to the State in question on how to conform to the particular treaty. Although it provides non-binding rulings, the public pressure exerted by such a case can have significant impact on governments. As its name indicates it is optional - a State which has ratified the treaty need not ratify the Protocol. Although the ability to file a complaint is generally limited to those who have exhausted all remedies in their domestic jurisdiction, a Protocol gives women and girls an avenue to reach beyond the domestic legal impediments discussed below.

The Optional Protocol of the *ICCP* allowed Sandra Lovelace, a Maliseet woman, to launch a complaint before the UN Human Rights Committee.⁽¹⁶⁾ She complained that under the *Indian Act* she lost her status when she married a non-Aboriginal man, although the same provisions did not apply to an Aboriginal man who married a non-Aboriginal woman. The international case focused attention on the Canadian government, which was forced to address the problem and change the legislation to be more gender neutral.

The *CEDAW* now has an Optional Protocol, although Canada has yet to ratify it.⁽¹⁷⁾ If adopted this Protocol will place a powerful tool in the hands of Canadian activists working to end inequality for women and girls in Canada.

Domestic Enforcement

Although international law is drafted with the protection of human rights in mind, this provision must play a balancing act with the sovereignty rights of signatory States. One basic rule of international human rights law is that in order to access the enforcement mechanisms noted above (no matter how inadequate), all domestic remedies must be exhausted. In other words "(t)he international machinery is clearly intended to be subsidiary, the initial onus for protecting human rights and defining the methods or means of protecting rights rests on local authorities" (Bayefsy, 1994:354).

Within Canada we face barriers to the implementation of most ratified treaties due to our constitutional division of powers.⁽¹⁸⁾ This is important to note as it dictates to what extent those rights ratified internationally by Canada can/must be implemented domestically and therefore what affect these treaties have on the rights of individuals within Canada. Some assert that due to these barriers, many Conventions are not legally enforceable upon the Canadian government (Canadian Coalition for the Rights of Children, 2000:3).

Essentially, the federal executive branch of government holds the power to sign treaties on behalf of Canada,⁽¹⁹⁾ while the provisions of most treaties must be implemented by the legislative branches of government, either federal or provincial, depending on who holds that constitutional head of power (Malanczuk, 1999:147-8). If the federal executive branch of the Canadian government signs a treaty which deals with powers reserved to the provinces under the Constitution, then the rights manifest in the treaty cannot be enforced in favor of the individual unless the province chooses to make legislation doing so (Kindred, 1993:169). The UN Convention on the Rights of the Child has noted this barrier to full implementation as problematic. In response to Canada's first report on measures taken to implement the *CRC*, the Committee concludes that domestic national law does not adequately reflect *CRC* principles, as its provisions have not been entered by parliament and therefore have no direct application to Canadian law (Canadian Coalition for the Rights of Children, 2000:130).

This position is mitigated to an extent by international legal norms. Despite constitutional difficulties Canada, as a signatory to various Conventions, must balance the notion that "... statutes should be interpreted in a manner that is consistent with international law ..." (Byrnes, 1996:8).

Although a Convention cannot be used as the basis upon which to begin an action, there have been many Canadian cases in which UN Conventions have had an impact on an outcome, due to an effort to import the principles of international law in interpreting Canadian legislation.

A recent Supreme Court of Canada case has stated, in relation to the *CRC* that: "... children's rights, and attention to their interests, are central humanitarian and compassionate values in Canadian society," and that documentation of these values could be found in international instruments (*Baker v. Canada*, 1999).⁽²⁰⁾ Several commentators have cited *Baker* as a watershed in the constitutional battle over international treaty implementation, noting that "... both the majority and the minority decisions emphasized that international law will be a critical influence on the interpretation of the scope of the rights included in the Charter" (Bazilli, 2000:14).⁽²¹⁾

Domestically, international law has also been taken into account when identifying the parameters of public policy. In the case of *Canada Trust Co v Ontario Human Rights Commission*,⁽²²⁾ international treaties dealing with non-discrimination, including *CEDAW* were "... taken into account in determining whether a sexist, racist and classist charitable trust was against public policy" (Byrnes, 1996:8).

It must be emphasized, however, that the domestic legal barriers to a full implementation of international treaties at the level of the individual Canadian are of serious concern. Constitutional divisions of power and Canada's "transformational" adoption mechanism for treaties cast serious doubts on whether the average Canadian can truly claim the progressive rights articulated in many treaties. Provincial legislation and policy does not *have to* measure up to treaties signed by the federal government. The cases noted above have included international human rights norms due to judicial discretion, not legislative adoption. This severed line of responsibility violates the spirit of these treaties, effectively allowing Canada to maintain an excellent appearance internationally, while simultaneously refracting responsibility for many treaty rights to the provinces, who are not bound by

the treaties. The effect is that treaty rights to which Canada purports to be party are effectively unenforceable where they are needed, at the level of the individual Canadian.

Despite such significant barriers there are international political, economic and social pressures which strongly encourage states such as Canada, holding a good international reputation for human rights, to make efforts to apply treaties and customary law as they are intended. The Canadian government maintains a high profile and a strong stance on human rights issues internationally and must feel some pressure to maintain this good reputation. For instance, Canada was responsible in part for drafting the *CRC* and hosted the 1990 World Summit for Children, making a public statement about our commitment to the rights of the child. More specifically following the Beijing Conference, the Canadian International Development Agency funded a week-long international conference on gender barriers to the girl child, bringing thirtyone girls from around the world to share their experiences. Actions such as these are manifestations of Canada's support for a broad implementation of human rights treaties and must be encouraged and noted in advocating for the girl child.

Although formal international enforcement mechanisms are far from perfect, ultimately governments, international bodies and courts continue to apply the norms of international law in their work, and "... most states are careful to observe most obligations of international law most of the time ..." (Malanczuk, 1999:6). The ability of activist organizations to call human rights violations within Canada to the attention of the international community is the most effective tool we have to ensure that Canada continues to move toward fully implementing treaties which protect the right of the immigrant and refugee girl child.

THE CHARTER

One of the main ways in which Canada claims to meet its international legal obligations is through the implementation of the *Canadian Charter of Rights and Freedoms* (the *Charter*).⁽²³⁾ In the case of *Davidson v Slight Communications*,⁽²⁴⁾ the Supreme Court of Canada stated that the *Charter* "... should generally be presumed to provide protection at least as great as that afforded by similar provisions in international human rights documents which Canada has ratified."

The *Charter* is incorporated into the Canadian Constitution, and is therefore part of the supreme law of Canada. All legislation must be drafted and enforced in accordance with its provisions. The *Charter* contains numerous provisions which guarantee the rights of the immigrant and refugee girl child. In fact the *Charter*, on paper, provides more protection in some areas than that guaranteed by international human rights instruments (Bazilli, 2000:4).

It is in the application and interpretation of the *Charter* that inequalities are perpetuated.⁽²⁵⁾ Despite guarantees, there are disparities between the written law protecting her and the lived experiences of the immigrant and refugee girl child in Canada. Very few of the numerous cases importing international human rights norms into Canadian case law deal with children, and fewer still with human rights violations specific to the girl child or women (see Shabas, 1996:Appendices 1 & 2). In developing ways to incorporate international human rights guarantees into activism strategies, advocates should make the connection between those international and domestic legal guarantees and the role the *Charter* plays (or does not play) in making them reality.⁽²⁶⁾

Activists in *Charter* litigation around the issue of violence against women and consent in sexual assault have made this type of connection. In the case of *R v Ewanchuk*,⁽²⁷⁾ Justice L'Heureux-Dubé makes a direct connection between the rights articulated in *CEDAW* and those in the *Charter*:

8

Canada is party to the *Convention on the Elimination of All Forms of Discrimination Against*

Women, which requires respect for and observance of the human rights of women. Violence against women is as much a matter of equality as it is an offence against human dignity and a violation of human rights. These human rights are protected by ss. 7 and 15 of the *Canadian Charter of Rights and Freedoms*.

This type of construction reinforces Canada's obligations to vulnerable persons at several levels, and underscores the interrelationship between the *Charter*, which is more directly accessible to Canadian individuals, and international human rights law.

Endnotes:

⁵ This paper deals only with human rights instruments under the auspices of the United Nations. It does not cover the International Criminal Court or the Organization of American States except where examples of litigation from these bodies speak to the potential to address human rights violations through international tribunals or courts generally.

⁶ The term "treaty" is seldom used. More often the words "convention" (Canada's preference), or "declaration" are used. "Declaration" has been used both for formal (binding) and less formal (non-binding) agreements (Kindred, 1993: 82 and 87).

⁷ This is the United Nations' most ratified treaty. Only the United States and Somalia have not ratified it at this point. One feminist commentator has noted areas, however, where the CRC could be used against the interests of women (namely the mothers of the children in question, or older children). Frances Olsen, "Sex Bias in International Law: The UN Convention on the Rights of the Child" (1992) 23 *Indian Journal of Social Work* 491.

⁸ The Refugee Convention, although not age or gender specific, protects everyone who is a refugee as defined by Article 1 of the Convention, including a refugee girl child. CEDAW contains no age restriction and protects "women" against numerous human rights violations. CEDAW applies equally to all females regardless of age (Bernard, 1996:8). In practice girl children are often conveniently treated as women regardless of their age. Some child-brides are as young as 12 years old, and girl children are often engaged in employment and the care of male children to support their families. (Karen Homer, "Child Brides" *Childview* Summer 2001:4). CRC covers everyone who is under the age of 18 (Article 1), including the immigrant and refugee girl child.

⁹ The role of the CRC and CEDAW in protecting the human rights of the girl child was confirmed and emphasized by the United Nation Commission on the Status of Women (1998).

¹⁰ This was originally drafted as a non-binding resolution, but it is now widely claimed that it has acquired the status of customary law (Szabo, 1982: 11).

¹¹ Canada is bound by customary international law. The mechanisms by which such documents become customary are beyond the scope of this paper. (See Malanczuk, 1999: 53; and Kindred, 1993: 81 and 147).

¹² "Soft law" is said to operate in the area between law and politics, allowing states to "try out" concepts and obligations before actually signing on to them in treaty form. (See: Malanczuk, 1999: 54-55; and Kindred, 1993: 78.)

¹³ The Platform especially focuses on the plight of the girl child, and should be quoted extensively in conjunction with other instruments when advocating for the girl child.

¹⁴ A reservation is an exclusion of certain provisions from the Convention by a signatory State. States must file reservations, and they are published with the Convention. The Committee associated with the Convention often writes a comment on each reservation and publishes this with the Convention as well.

¹⁵ A "shadow" report is filed by NGOs with the Committee at the same time the government provides its official report. It will point out discrepancies between the steps taken by government and the actual condition of those

whose rights are being violated. For instance during Canada's last CEDAW report filing the Ontario Association of Transition Houses (OAITH), the National Association of Women and the Law (NAWL) and Low Income Families Together (LIFT), to name a few, filed shadow reports emphasizing the gap between international rhetoric and Canadian reality for women and girls.

16. Communication No. R.6/24, 36 UN GOAR Supp. (No. 40) at 166, UN Doc. A/36/40.

17. Optional Protocol to the Convention on the Elimination of All Forms of Discrimination Against Women. Annex to the UN General Assembly Resolution, 15, October 1999. See <http://www.un.org/womanwatch/daw/cedaw/protocol>.

18. These "rules" are slightly different for customary international law, as Canada is said to be "adoptionist" of customary law and "transformational" in terms of treaty law. Transformational application of international law requires that Canada "transform" treaty rights by way of legislation into application in Canada (Kindred, 1993: 147-48.). "Transformation theory states that international law is only part of domestic law when it has been incorporated into domestic law" (Bayefsky, 1994: 360).

19. Canada uses a "federal state clause" in signing treaties, which allows each province the power to opt in/out of the treaty as they agree to be bound. Such clauses are falling out of favor internationally, for instance the Convention on the Elimination of All Forms of Racism does not allow for such a clause (Malanczuk, 1999: 171).

20. *Baker v Canada (Minister of Citizenship and Immigration)* [1999] S.C.J. No. 39, online: QL (SCR). Included in this decision was a strong dissent disagreeing on the grounds that the division of powers between federal and provincial governments would be compromised by the step of "adopting" treaty principles directly into Canadian law.

21. See also: *Jurisfemme*, 19, 1, Fall 1999 and Estella Muyinda, "Using the Charter and International Human Rights Standards in Domestic Race-Based Litigation," Court Challenges Program of Canada.

22. (1990) 69 DLR (4th) 321 (Ont CA).

23. In fact over 400 Canadian cases involving the Charter or various human rights legislation have referred to or analyzed international human rights instruments. (Schabas, 1996: foreword viii). Human rights legislation is not examined here as many provinces allow a legislated age limit which excludes young and older people, usually those under 19 and those over 65 from the protections afforded in those laws.

24. 59 DLR (4th) 416 (1989) at 427-428.

25. See for example Joel Bakan, *Just Words* (Toronto: University of Toronto Press, 1997) and Michel Mandel, *The Charter of Rights and the Legalization of Politics in Canada*, Toronto: Thompson Educational Publishing, 1994.

26. See: Bruce Porter, "Judging Poverty; Using International Human Rights Law to Enforce the Scope of Charter Rights" 15 *J of L and Soc.* 2000 at 3.

27. *R v Ewanchuk* [1999] 1 SCR 330.

From Rhetoric to Reality

IV. EMERGING THEMES

The following segment will examine themes which emerge from the literature concerning the experiences of the immigrant and refugee girl child in Canada. Each theme will be preceded by a summary of articles from international instruments which outline, arguably, Canada's obligations to the immigrant and refugee girl child. The full text of the articles can be found in Appendices I to VIII. The purpose is to contrast Canada's obligations at the international level with the lived experiences of the immigrant and refugee girl child in Canada.

A) GENERAL

Included in the Appendices are summaries of selected excerpts of treaty and non-treaty instruments, which have particular relevance to the rights and experiences of the immigrant and refugee girl child in Canada. Due to their length and complexity, the instruments should be read in their entirety for full comprehension and context. The *Vienna*, *Stockholm*, and *Beijing Declarations* particularly should be referred to in their entirety as only very short excerpts are included, and they represent a more elaborate (if "softer") statement of Canada's aspirations for the realization of human rights globally.

I include here some more general rights, responsibilities and themes which appear in the instruments, and have relevance to the situation of the immigrant and refugee girl child, or which provide context to some of her rights under international law. Generally, many instruments articulate rights such as the right to be free from discrimination on a number of grounds including gender and race,⁽²⁸⁾ and the *CRC* (Article 42) requires that the provisions of that convention be made known to Canadians. More specifically several instruments emphasize the role of parents and families in the lives of children. For instance, parents are given the primary economic responsibility for their children (*CRC*, 1989:Article 27), primary responsibility (and rights) around the religious education of their children (*CRC*, 1989:Article 14; *ICCP*, 1966:Article 18[3]), the right to choose schools which provide a particular religious or moral education (*ECOSOC*, 1966:13[3]), and the economic support of both parents is mandated (*CRC*, 1989:Article 18). The family is recognized as the primary unit of care for the child, and protection for this unit is demanded (*ICCP*, 1966:Article 23; *Vienna Declaration*, 1993:Paragraph 21[3]).

The *Refugee Convention*, although having direct bearing on the rights of the refugee girl child, outlines only very general rights, such as the right (under certain circumstances) to: remain in a country of refuge,⁽²⁹⁾ practice religion, be employed, receive subsistence housing and food, etc. Except in extremely rare instances Canada meets its minimum obligations to the refugee girl child under this convention once she is permitted to remain in Canada.

B) LACK OF GENDERED DATA

Canada is signatory to the *Declaration on the Elimination of Violence Against Women*, a non-treaty instrument (see Appendix I). The declaration suggests that states "should" pursue the elimination of violence against women, and as a step in doing so collect and compile statistics on violence against women (especially around domestic violence). The declaration also suggests that states "should" encourage research on various aspects of violence against women, and that both the statistics and findings of the research "will" be made public.

The girl child is not directly referred to here, however it can be argued that she is covered by the

Declaration. Due to gaps in services and legislated protection against domestic violence (see Section E: Violence), girls in their late teens should be considered "women" for the purposes of this *Declaration*. The Canadian girl child of this age group easily "falls through the cracks," being able to receive neither children's services and protection nor those designed for adults. She is effectively being treated as an adult by being unable to access children's services, and should, therefore, benefit from the adult designation as "woman" when there is doubt. Any other interpretation once again leaves her unaccounted for. Secondly, there is no age limit on "women" in the *Declaration*. For the young girl who becomes a child-bride, for instance, the definition of "woman" is already being used within extremely flexible parameters.

Data on the Girl Child in Canada

Across the literature there is a noted absence of data specifically on the immigrant and refugee girl child in Canada. This may take the form of a paucity of national data (Canadian Coalition for the Rights of Children, 2000:10); an absence of data on children in a particular area (Tipper, 1997:18); available data that has not been differentiated along gender lines; or data that does not specifically identify immigrant, refugee or visible minority girls (Canada, Health Canada, 1999). This lack of research renders invisible the true situation of the immigrant and refugee girl child, and inhibits our ability to tailor anti-violence programs and policies to address her specific needs. It can also reflect a lack of sophisticated gender and/or race analysis in a given study and may indicate survey questions or methodology not designed to highlight or pinpoint the intersection of these forms of oppression with violence.

The dissemination of data that does exist is another concern. Although data is available to researchers it is not widely accessed by the public due to formatting and/or accessibility. There are very few popular education or interpretive tools available to the layperson seeking to interpret data and/or studies. Results are also not readily available in comprehensible format for distribution to girls themselves. One result is that available data is not inserted into the public discourse around violence.

C) POVERTY

Canada is party to a number of treaties which address the problem of poverty (see Appendix II). These include the *CRC* and the *ECOSOC*. The *CRC* mandates that states "shall" enforce the convention equally, and prohibits discrimination based on a child's race, colour, sex, etc.⁽³⁰⁾ The *CRC* mandates that states "shall" ensure the survival and development of children, and asserts the right of a child to a standard of living which is adequate for the child's physical, mental, spiritual, moral and social development. The state is mandated, within its financial capability, to provide programming and services to assist parents and others responsible for the child in implementing this right.

The *ECOSOC* asserts the right of "everyone" to work which will provide them and their family with a "decent living." This right is to be implemented equally for women as for men. The covenant also guarantees the right to have adequate clothing, food, and housing for "everyone" and their family.

Canada is also party to a number of non-treaty instruments which address poverty. The *Vienna Declaration* acknowledges the existence of widespread "extreme" poverty and cites it as a violation of "human dignity." The declaration also states that the elimination of poverty must remain a high priority, and calls on States to take steps to do so.

The *Beijing Declaration* and *Platform for Action* also address poverty. This *Declaration* emphasizes the unequal position of women in the sharing of economic wealth, and calls on states to promote the economic independence of women. The *Platform for Action* indicates, "... Female-maintained

households are ... among the poorest because of wage discrimination, occupational segregation and other gender-based barriers." The *Platform* and the *Declaration* both discuss the negative effects of globalization on the economic position of women and their families.

The *CEDAW* Committee, in response to Canada's last mandatory report, issued a Concluding Comment recommending that the Canadian government "... address urgently the factors responsible for increasing poverty among women and especially women single parents and that it develop programs and policies to combat such poverty, and that social assistance programs directed at women be restored to an adequate level."⁽³¹⁾

Poverty in Canada

Here it's all about money. At my school, if you have money and the right clothes you are cool. In Poland, people decide whether or not you are cool based on the sort of person that you are. (Participant in immigrant and refugee youth focus group) (Kunz & Hanvey, 2000: "In Their Own Words")

Recent reports point to an increase in overall child poverty, and an alarming rate of immigrant and refugee child poverty in Canada. The reports fail to provide a gendered analysis of immigrant and refugee child poverty, however it is certainly safe to assume that a healthy proportion of those children affected are immigrant and refugee girl children, given their numbers in Canada.

Since 1989 there has been an increase of 49% in the number of poor children living in Canada (Campaign 2000, 2000:1). Immigrant children, Aboriginal children and visible minority children⁽³²⁾ fall to the bottom of the income pile. More than one third of new immigrant families live in poverty. This rate is much higher than the Canadian population as a whole (Beiser et al., 1998:35). Similarly 42.7% of visible minority children are poor, compared to 23.4 % of all children (Campaign 2000, 2000:1). Immigrant and refugee children are more likely to live in lower income families (Kunz & Hanvey, 2000:"Arriving in Canada"). Despite the fact that immigrant and refugee children are disproportionately affected by poverty, immigrants are more likely to be employed than Canadian nationals, and have an overall higher education level (Kobayashi et al., 1998:3).⁽³³⁾

The devastating effects of poverty have a disproportionate impact on lone-parent families, particularly those led by women (Campaign 2000:6). In 1996 in Canada 61.4 % of families headed by single mothers with children under 18 were poor (National Council of Welfare, 2000:Table 2.6). In the same year 83% of lone-parent families in British Columbia were headed by women (British Columbia Ministry of Women's Equality, 1998). A child living in a single-parent family headed by a woman is five times more likely to live in poverty than a child in a two parent family (Tipper, 1997:15-16). There is an obvious link between the negative impacts of economic discrimination against immigrant and refugee women, and the health and well being of their children.

There are strong links between poverty and systematic discrimination against women and girls (Working Groups on Girls, 1995:2). Recent studies indicate that women are among the poorest persons in Canada, and that 56% of women heading single-parent families have incomes below the poverty line. (Waldorf and Bazilli, 2000:35). The links between poverty and gender are manifested in Canada for immigrant and refugee women and their children, through reduced economic status and circumscribed labor force participation. Both Canada's failure to recognize the professional credentials of many immigrant and refugee women, and the plight of women domestic workers in Canada serve to illustrate this point (National Association of Women and the Law, 1999:8-12; Fitzpatrick and Kelly, 1998).

The United Nations Committee on the Rights of the Child has noted that "child poverty, especially

among vulnerable groups such as lone parent families, and the lack of programs for education, housing and nutrition" is a particular concern in Canada's implementation of the *CRC* (Committee in the Rights of the Child, 1995:par. 12). Marginalized women including Aboriginal women and immigrant and refugee women may have difficulties accessing services such as welfare benefits, due to racism and sexism (Janovicek, 2000). These concerns have manifested themselves as a decline in the health of some immigrant and refugee children in Canada. Immigrant children of lone parents are more likely to report health problems, to have access to fewer informal social supports, and to make greater use of community and social services professionals, health professionals and religious and spiritual leaders. While these findings are no doubt true of all lone-parent families, it is important to recognize the specific conditions faced by immigrant lone-parent families, especially because of the compounding effects of lone parenthood combined with recent immigration status (Kobayashi et al., 1998:38).

The Ontario Association of Transition Houses (OAITH), in a recent brief presented to the federal government, made direct links between poverty and the prevention of violence against women and children. This brief was part of a larger project funded by the National Action Committee on the Status of Women (NAC) around Canada's first report to the United Nations on its implementation of *CEDAW*. The effects of recent government economic policies on women's poverty were highlighted. OAITH traced provincial cuts to funding for transition houses, pay equity, and subsidized housing, and federal government transfer payment cuts to an alarming trend: "... women ... were considering returning to violent partners or giving custody of their children to violent partners, to make sure their children would be fed" (Waldorf and Bazilli, 2000:44). This brief was later submitted to the United Nations Special Rapporteur on Violence Against Women in November of 1996 as evidence of the gulf between international human rights rhetoric and domestic government practices. In response, the *CEDAW* Committee of the United Nations expressed concern that "... there seems to be little understanding of the impact economic restructuring can have on women" (Waldorf and Bazilli, 2000, 46-47).⁽³⁴⁾

The impacts of poverty on the girl child are varied and generally negative; children who live in poverty are at greater risk for physical and mental health problems, have high infant mortality rates, and low birth weight (Tipper, 1997:16). There are concerns about the effects of poverty on a student's ability to fully participate in school (Canadian Coalition for the Rights of Children, 2000:79). Socially, poverty can be a further barrier to acceptance for a child already isolated by language, culture, race and gender. Young immigrant participants in a recent focus group expressed negative feelings about Canada's consumer culture, citing it as "a cruel aspect of society to contend with, given that their families didn't have much money" (Kunz & Hanvey, 2000:"In Their Own Words").

D) TRAFFICKING AND SEXUAL EXPLOITATION OF CHILDREN

Both the *CRC* and the *CEDAW* contain provisions designed to eliminate the trafficking and sexual exploitation of women and children. The *CRC* mandates that states "shall" take measures to prevent children being taken or kept outside of Canada. More specifically the convention indicates that states "shall" take all appropriate steps to prevent the sale, abduction or trafficking of children for any purpose and in any form, as well as broadly mandating protection for children against any form of exploitation which would be prejudicial to any aspect of a child's welfare. The convention requires that states "shall" protect children from all forms of sexual exploitation and sexual abuse, and lists specific abusive or exploitative activities which states "shall" take measures to prevent. The *CEDAW* requires that states take all appropriate measures, including legislation, to suppress all forms of trafficking in women, and exploitation of prostitution of women.

Canada is also party to a number of non-treaty instruments which address the exploitation and

trafficking of women and children. The *Stockholm Declaration* deals extensively with the commercial sexual exploitation of children, and should be read in its entirety. Appendix III outlines several paragraphs which have particular relevance to the situation of the girl child.

The *Stockholm Declaration* accords high priority to steps which will eliminate the commercial exploitation of children, and makes a commitment to develop and implement **gender-sensitive** programs to prevent the commercial exploitation of children. The declaration also makes a commitment to implement **gender-sensitive** plans to assist the victims of such exploitation in their recovery and reintegration into society.

The Declaration on the Elimination of Violence Against Women defines trafficking in women and forced prostitution as "violence against women" and calls upon all states to adopt a policy of eliminating such violence, with a special emphasis on women who are especially vulnerable.

The *Vienna Declaration* calls the sexual exploitation and international trafficking in humans "incompatible with human dignity," and calls for their elimination. The declaration also calls for an increase in the strength of mechanisms designed to protect vulnerable children, particularly the girl child, and those who are exploited economically and sexually through pornography and prostitution.

Sexual Exploitation of the Girl Child in Canada

There are people in our communities who are trying to lure our children and youth into the sex trade. (British Columbia Ministry of Attorney General, 2000)

Globally the child sex trade is a booming business.⁽³⁵⁾ Trafficking in children takes numerous forms from prostitution to abuse of domestic workers to importing children as "mail order brides"(Mirkinson, 1994). The United Nations Special Rapporteur on Child Prostitution has condemned such exploitation in the following terms:

The sale and trafficking of persons must be unequivocally condemned as being an affront to human dignity, since it reduces people to the level of objects of trade and commerce. (Special Rapporteur on the Sale of Children, 1999:par 152 (a))

Within Canada, the girl child is also the victim of sexual exploitation in the form of child prostitution, pornography, and forced marriage (Russell, 1998); they are exploited as domestic workers (Macklin, 1992); and mail order brides (Philippine Women Centre of British Columbia, 2000).

The Canadian response to these forms of violence against women and girls has been fairly robust on paper, including legislation and policies designed to prevent sexual exploitation of children and provide assistance to sexually exploited youth. In the aftermath of the 1996 First World Congress Against Sexual Exploitation of Children in Stockholm, Sweden, Canada passed Bill C-27 in April of 1997 which allows for criminal prosecution in Canada of Canadians or permanent residents who participate in child prostitution abroad.⁽³⁶⁾ Canada also hosted an international conference on sexually exploited youth entitled "Out of the Shadows."⁽³⁷⁾ This was followed by a series of roundtable conferences facilitated by Status of Women Canada resulting in the implementation of "... an action plan designed to eradicate child sexual exploitation" (Jiwani, 1999b:37) by working in conjunction with various federal ministries and NGOs.

In British Columbia former Attorney General Andrew Petter declared March 6-12, 2000 "Stop the Sexual Exploitation of Children and Youth Awareness Week." The government of British Columbia has also set up 17 community action teams comprising police and social workers whose aim is to

provide assistance for sexually exploited youth (British Columbia Ministry of Attorney General, 2000).

Despite these measures, however, the sexual exploitation of children continues to be a problem in Canada. Numerous recent reports and publications have drawn attention to the scope of child sexual exploitation in Canada, and the picture has been shocking. "In BC, even young children are becoming involved in the sex trade. Today it is not uncommon to find children as young as 11 and 12 being sexually exploited in prostitution" (British Columbia Ministry of Attorney General, 2000). Vancouver's Downtown Eastside is home to sexually exploited youth as young as eleven (Shortt, 1998:15, 16, 18-20). The nexus of racism and sexual exploitation is explored in a recent report on Aboriginal children and youth who are or have been being sexually exploited. "In Vancouver, some people would just let us (sex trade workers) die, somehow other people get to decide who gets to live and who gets to die, and who deserves it. A lot of them are Aboriginal, so if you are Aboriginal and work in the sex trade, (the general feeling is) who cares, another problem over" (Save the Children Canada, 2000:24). The devaluing of sexually exploited children and youth is compounded and perpetuated by their social location as racialized people.

Several key legislative attempts to regulate the sexual exploitation of children have been underutilized or applied in ways that, in fact, revictimize those being exploited. As of January 2001 there has been one conviction under Section 212 (1)(a) of the *Criminal Code*, which allows for prosecution of those who engage in child prostitution outside of Canada. In contrast, the offence of communicating for the purposes of prostitution (Section 213 of the *Criminal Code*) is heavily enforced against women and girls in the sex trade in Canada, resulting in the criminalization of these vulnerable girls (Lowman, 1998).

The wide availability of child pornography and other forms of exploitative material on the Internet leaves an open door for those who would persist in victimizing children. The proliferation of child pornography, so readily available on the Internet, has been linked to trafficking and sexual exploitation of girls and women (Joseph, 1995; Pierce, 1984).

The immigrant and refugee girl child⁽³⁸⁾ is particularly vulnerable to this form of exploitation and abuse.⁽³⁹⁾ Several factors have been identified as increasing the risk for sexual exploitation including previous exposure to violence, low self-esteem, poverty, and difficult family conditions (British Columbia Ministry of Attorney General, 2000:2; Jiwani, 1999b:38). There have also been links made between trafficking and sexual exploitation and poverty, unemployment and previous experiences of intra-familial violence (Davis with Shaffer, 1994; Holmes and Silverman, 1992; Jackson, 1998).

The refugee girl child may be especially vulnerable due to experiences of violence in armed conflict, the loss of parents through armed conflict or placement in a refugee camp (Jiwani, 2000:Appendix I, 38). The immigrant and refugee girl child, as discussed above, is disproportionately affected by poverty in Canada. She may encounter difficulties in obtaining gainful employment due to racism, sexism and ageism, (Kunz & Hanvey, 2000:"Highlights") leaving her more vulnerable to being forced into situations of sexual exploitation to meet her economic needs or those of her family, in Canada or abroad.

These factors in themselves do not necessarily lead to the sexual exploitation of girl children. It is only within a society which devalues and sexualizes girl children and women, and which hesitates to take decisive measures to target those who exploit the girl child that the girl child is easily commodified and dehumanized.

E) VIOLENCE

Canada is party to at least two treaties which speak to and prohibit violence against children and women. The *CRC* demands that states "shall" take all measures (legislative, administrative, social and educational) to protect children from physical or mental violence, injury or abuse, neglect, negligent treatment or maltreatment and exploitation by parents, legal guardians or "any other person who has care of the child." The convention also outlines procedures and social programs which would be designed to allow reporting, investigation and potentially judicial involvement in child abuse situations.

The *CEDAW* prohibits discrimination against women, and mandates states to take legislative and administrative actions to eliminate it. Although it does not mention violence particularly, gendered violence constitutes discrimination against women and girls.

At the non-treaty level, violence against women and children is extensively discussed and decried. The *Vienna Declaration* calls gender-based violence "incompatible with the dignity and worth of the human person" and calls for its elimination, suggesting various measures to do so. The *Declaration* also calls on states, institutions, intergovernmental, and non-governmental organizations to intensify efforts to protect the rights of women and the girl child.

The *Declaration on the Elimination of Violence Against Women* is dedicated wholly to the discussion of violence against women and its elimination; it should be read in its entirety. Specifically the declaration defines violence against women to include psychological and physical forms of violence in both public and private spheres, as well as violence condoned by the State. It also articulates rights of women including the right to life, liberty and the security of person, and the highest standard attainable of physical and mental health.

The *Beijing Declaration* declares that signatory states are "determined to" prevent and eliminate all forms of violence against women and girls.

United Nations Committees regularly issue General Recommendations. These recommendations apply to all signatory States, and can be used by a Committee to "... elaborate its understanding of particular articles of the Convention, or of how the Convention applies to thematic issues." Byrnes notes that these recommendations offer "... particularly persuasive interpretations ..." (Byrnes, 1996:6). The *CEDAW* Committee has adopted a number of General Recommendations including General Recommendation Number 19. This Recommendation states that "... a nation's complicity in failing to sanction private acts of violence against women will constitute discrimination in violation of the Convention." (Sullivan, 1995:129; Ulrich, 2000:646).⁽⁴⁰⁾

The United Nations has specifically noted violence against women in the family as a human rights abuse. The report *Violence Against Women in the Family*⁽⁴¹⁾ explicitly acknowledges that "... women are more often at risk from those with whom they live and many of them live constantly with the threat of "domestic violence," whether battery, rape, incest or emotional abuse."⁽⁴²⁾

In the case of *Valasquez Rodriguez v Honduras*,⁽⁴³⁾ involving "disappearances" in Honduras, the Inter-American Court of Human Rights declared that:

Par. 174. The State has a legal duty to take reasonable steps to prevent human rights violations and to use the means at its disposal to carry out a serious investigation of violations committed within its jurisdiction, to identify those responsible, to impose the appropriate punishment and to ensure the victim adequate compensation.

Par 175. The duty to prevent includes all those means of a legal, political, administrative and cultural nature that promote the protection of human rights and ensure that any violations are considered and

treated as illegal acts, which, as such, may lead to punishment of those responsible and the obligation to indemnify the victims for damages.

Although the Inter-American Court of Human Rights is not a United Nations body, several commentators have noted legal links, and thus applicability of these principles to the interpretation of UN Conventions (Byrnes, 1992:227, Sullivan, 1995:130).

Violence against the Girl Child in Canada

My father's hit me yeah, a lot of time. When I was younger a lot. I used to always say this is not going to do anything; this is not going to change anything I want to do. It used to quiet me down for the moment but I wasn't going to ... it would scare me for a week but then I would be at it again. I know my limits as to when I can ask, how long I'm going to have to wait. (Second-generation South Asian immigrant girl) (Handa, 1997:17)

Sexual exploitation and trafficking of girls is one extreme form of violence that the girl child faces. Due to the nature of trafficking in people, usually involving the transport of persons across international or provincial boundaries, it is the subject of many, specific international legal instruments designed to address the international community's role in stemming the flow of people across borders. Prohibitions against other forms of violence against women and girls also find their way into international legal instruments despite their primarily domestic application. Parties to these instruments are mandated to take internal action to eliminate these forms of violence from both public and private spheres. Although there are numbers of female children involved in the child sex trade and being trafficked in Canada, the daily lives of immigrant and refugee girl children who have not experienced such extreme forms of violation are also affected by violence in many forms. The following sections explore some of the many forms of violence that the girl child in Canada must negotiate.

Isolation is a theme which continually surfaces in the literature as a factor informing the experience of the immigrant and refugee girl child. This includes isolation as a family due to cultural and linguistic barriers,⁽⁴⁴⁾ isolation from the family in the clash of values between mainstream society and the family, and in some cases geographic isolation for immigrant and refugee families who live in rural areas of Canada.⁽⁴⁵⁾ These various forms of isolation push the immigrant and refugee girl child further from various sources of protection and empowerment, increasing her vulnerability to human rights abuses.

The Canadian girl child continues to experience violence in her home, sexual harassment, dating violence and violence at school. The marginalized position of the immigrant and refugee girl child, by virtue of her social and economic location, makes her especially vulnerable to violence and victimization. The NGO "Working Groups on Girls" has noted in a recent report that immigrant and refugee girls experience a higher rate of violence due to the strains of acculturation, and the devaluing of women in both the dominant and immigrant culture (Friedman, 1995). A recent publication by the Canadian Beijing Facilitation Committee provides a snapshot of this experience with violence:

A Canadian study of girls under sixteen highlights the problem: 54% reported unwanted sexual experiences, 24% reported forced/attempted sexual intercourse and 17% reported incest. Sixty-three percent of sexual assaults reported to police are committed against women and girls under the age of 18. A Canadian study of street children indicates that more than 1/3 are girls. Ninety-six percent left home to escape abuse. (Russell, 1998:109)

Violence in the Home

Canada's child welfare system is charged with protecting the girl child from violence against her in her home. Each province and territory creates its own legislative regime. Families are recognized as a child's primary source of care, if a child is found in need of protection the government must intervene to protect that child. However, in several jurisdictions children over the age of 16 are not eligible for protection. This is seen as a significant legislative lapse in the child welfare regime, and an indicator of Canada's failure to comply fully with the *CRC* (Canadian Coalition for the Rights of Children, 2000:11). A recent review of Canada's child welfare system, in light of its international obligations under the *CRC*, was critical of this system's ability to protect children from violence, citing a lack of knowledge and resources as well as recent child deaths as key issues (Canadian Coalition for the Rights of Children, 2000:51). The UN Convention on the Rights of the Child states that "(p)rotecting children from maltreatment is an ongoing challenge in Canada. Little is known about the causes, prevention and treatment of abuse and neglect and child death reviews continue to identify failures in child welfare systems" (Canadian Coalition for the Rights of Children, 2000).

This lack of protection is particularly stark in the case of the immigrant and refugee girl child. Poverty and social isolation exacerbate any deficiencies in the child welfare system. The link between poverty and child abuse is well documented (Canadian Coalition for the Rights of Children, 2000:11), and as noted earlier immigrant and refugee children in Canada are disproportionately affected by poverty. Poverty alone, however, is not necessarily an indicator of abuse or violence. Issues of abuse have far more complex roots than poverty alone. It is the devaluing and sexualization of the girl child coupled with social and economic disadvantage that push her far from safety measures, and mainstream society plays an important role in isolating the immigrant and refugee girl child from these safety measures. In many cases immigrant and refugee girl children are isolated by their race, culture or language, forcing them to rely heavily on their families in the face of a racist mainstream culture (Tyagi, 1999).

Cultural expectations of gender roles, obedience and family solidarity may prevent the immigrant and refugee girl child from seeking help from mainstream Canadian society whose values may be seen as alien or threatening to the immigrant family (Centrie, 2000:75; Mogg, 1991:72; Imam, 1999:132-133; Tyagi, 1999:174). Mainstream Canadian culture contributes to the marginalization and silencing of the immigrant and refugee girl child through systematic racism which "... prohibits many visible minority women from seeking legal help to combat family violence" (National Organization of Immigrant and Visible Minority Women of Canada, 1993:19; Jiwani and Buhagiar, 1997:20).

Domestic violence against immigrant and refugee women also has a negative effect on the girl child who witnesses violence in her home. Studies have shown differential impacts of witnessing intimate violence on female children (Kerig, 1997). Effects include evidence of cognitive and developmental delays, anger, aggression, poor self-esteem, running away, and poor school performance (Tipper, 1997:17).

Immigrant and refugee women who are victims of violence face special challenges in accessing the justice system. Racism, cultural insensitivity and restricted access to health care, support services and social services make reporting violence difficult. "Any initiatives which aim to address violence against immigrant and refugee women must also address related issues such as racism amongst service providers in Canada and tensions among police authorities and immigrant and visible minority communities" (National Association of Women and the Law, 1999:15).

Dating Violence

You're not doing it to offend your parents, and you know you're not doing anything wrong. But you also know they will never understand. (Sunita Das, young Indo-Canadian immigrant in Winnipeg, on dating) (Kunz & Hanvey, 2000:"Foreword")

Some immigrant and refugee girls feel the need to conceal dating relationships from their parents due to restrictions placed upon them around dating and socializing. In some cultures subjects such as dating and sex are taboo, and parents make these life decisions for their children (Imam, 1999:132-133; Kunz & Hanvey, 2000:"Foreword"). Some parents may see the adoption of mainstream values around dating and sex as disrespectful, or a loss of family and culture to an overwhelming mainstream society (Centrie, 2000:74; De Las Fuentes, 1999:140).

Using this discourse of "cultural conflict," however, may simplify a much more complex interaction of factors, and ignore the role of racism in positioning the girl child. Amita Handa closely examines the cultural conflict model, and concludes that it does not sufficiently address the experience of the South Asian immigrant girl. Instead Handa contends they become social boundary markers for both their own cultural community and mainstream society. Handa asserts that mainstream, 'white' culture positions these girls as the 'oppressed ethnic' who is subject to the sexism of her 'backward' culture, while in her own community she becomes an important symbol of cultural retention in the face of the dominant mainstream. This position forces upon the immigrant girl child an extremely limiting, structural choice - one that will have negative consequences for her from one community or another (Handa, 1997:Ch. 1 & 2). A striking lack of services available specifically to address the needs of the immigrant and refugee girl child exacerbates the situation, and increases her vulnerabilities to other forms of victimization.

Girls may, therefore, be forced to use lying as a coping mechanism to negotiate the strains of living between the norms of two cultures (Handa, 1997:275):

My whole life is based on a lie and my parents probably know that ... I don't think a lot of Indian girls have anybody to talk to. They really don't. I know so many Indian girls who are having so many problems. (Focus group participant) (Handa, 1997:33)

My parents don't know this, but I spend what little free time I have with my boyfriend. (focus group participant) (Mogg, 1991:72)

Girls who find themselves in abusive dating relationships may be reluctant to disclose the abuse for fear of parental censure, having violated the prohibition against dating in the first instance. A recent study on dating violence and bicultural girl children found that those who were in abusive relationships were being manipulated by partners to stay in the relationship on threat of disclosures to the girl's parents (Handa, 1997:33). This may be one result of the immigrant girl child's positioning in Canadian society.

At a more broad level stresses within the family due to acculturation can have repercussions for the female child, who is disproportionately affected by parent-child conflict (De Las Fuentes, 1999:140). Family discord can trigger such problems as eating disorders, lower self-esteem and depression (De Las Fuentes, 1999:139).

Violence in Schools

Across Canada, students, teachers, researchers, and school administrators struggle to understand the causes of and cures for violence in schools. For instance British Columbia has introduced an anti-violence centre to intervene with children at risk and prevent bullying and violence in schools (British Columbia Ministry of Education Skills and Training, 1998). Nationally most school boards have "... policies and/or programs to address violence" (Day et al., 1995:ii-iv). However there is neither a national, comprehensive program against violence in schools, nor funding available for such a program (Canadian Coalition for the Rights of Children, 2000:89).

Programs that do attempt to deal with violence in schools often refer to it as "bullying." Programs

designed to eliminate "bullying" do not necessarily incorporate a gendered perspective, or encompass an anti-racist message. "Bullying" is a generic term which addresses behaviour that is often racist or sexist as though it were a benign - although annoying - interaction between children, and does not negate the complex dynamics of racism, homophobia, and sexism which inform the violence. Programs and curricula within schools which are designed to combat violence must address the experiences of those who are victims of violence in a way which truly names violent behaviours, recognizes the continuum of violence, and gives both victim and perpetrator the tools to identify and resist them.

A recent study involving various ethno-cultural groups in Toronto and Vancouver revealed that up to 25% of participating students suffer violence at the hands of other students (Warren, 1997:109). In Toronto 14% of children reported they were bullied because of their race (National Crime Prevention Centre, 1997). Human Rights Watch reports that, "Gay teenagers are often subject to so much bullying in U.S. schools that they are not receiving an adequate education. ... The harassment takes a serious toll on these students' emotional and physical health and on their academic studies. Some drop out of school. Others commit suicide" (Human Rights Watch, 2001). The prevalence of this type of violence in schools violates the broadly-defined right of the immigrant and refugee girl child to receive an education as outlined in the *CRC*. This right is informed by the *CRC*'s prohibition against unequal application of its provisions based on race or gender.

Sexual Harassment

Sexual harassment includes a spectrum of behaviour which ranges from demeaning comments and harassing phone calls to physical touching, grabbing, sexual gestures and the display of pornography or other materials which devalue women and girls. It is viewed as part of the continuum of violence that informs and supports violence against women and girls in society. (Buchwald, Fletcher and Roth, 1993). Sexual harassment is often dismissed as being trivial, or having no impact because at times it manifests itself as "teasing" or as a "playful, acceptable" interaction between boys and girls.

The consistent and insidiously "innocuous" nature of sexual harassment, however, renders it one of the most harmful and widespread forms of violence against women and girls. The behaviours and hierarchies between men and women which it renders "acceptable," underlie more "serious" forms of violence. Sexual harassment has been labeled as belonging to the arsenal of weapons in 'sexual terrorism,' "... men's systematic control and domination of women through actual *and implied* violence." (Emphasis added, Davis, 1997:193).

Large numbers of girls encounter sexual harassment in various forms on a daily basis. Recent North American studies indicate that between 70 and 80% of female students are being sexually harassed in their schools (Randall and Haskell, 2000:34). A recent Canadian work states that "... large numbers of young women in high schools encounter it (sexual harassment) daily ..." (Rooney, 2000:83). The Canadian Crime Prevention Strategy Programme notes that 48% of 12-year-old children reported being sexually harassed by other children, with girls outnumbering boys in reporting such behaviours (National Crime Prevention Centre, 1997:6). The effects of sexual harassment have been documented and include dropping out of school, lowered self-esteem, eating disorders, suicidal thoughts and attempts, and feeling unsafe in public places (Larkin, Rice & Russell, 1996; Orenstein, 1994; Stein, Marshall & Tropp, 1993).

Randall and Haskell point out that this type of harassment is an extremely effective way to reinforce gender imbalances "... sexual harassment can be viewed as a training ground for sexual subordination, for sexual harassment expresses the idea that girls and women are devalued objects to be viewed through male eyes, not as equally valued subjects in their own right" (2000:34).

For the immigrant and refugee girl the intersection of race, culture, age and gender make her a target

for sexual harassment. As we have seen racism is likely to affect her ability to interact within the school environment, making her less likely to be believed by those in authority. Deirdre Davis emphasizes the different impact of sexual harassment, specifically street harassment, has on racialized women and girls. "All women are subjected to street harassment and, consequently, street harassment is a form of gender subordination. However, when African American women are subjected to street harassment, street harassment is, at the very least, genderized and racialized" (Davis, 1997:195).

Part of this difference is informed by racialized and sexualized stereotypes about girls and women of colour. Kimberle Crenshaw calls this 'representational intersectionality,' "... the way that race and gender images, readily available in our culture, converge to create unique and specific narratives deemed appropriate for women of color" (Crenshaw, 1997, 554; see also Davis, 1997:196). Crenshaw examines numerous popular films and other media which portray racialized women as either exotic and easily accessible, or culturally oppressed and therefore unlikely to complain or be believed in situations of sexualized violence.

These stereotypes inform the ways that men and boys use sexual harassment against marginalized girls and, importantly, the ways in which authority figures respond to sexual harassment.

F) RACISM

Canada is party to both the *CRC* and the *CERD*. Both treaties represent efforts to eliminate and reduce the effects of racism. The *CRC* requires that its provisions be applied to all children equally, regardless of their, or their parent or guardian's race, colour, sex, language, religion, etc. The *CRC* contains provisions against poverty, and sexual exploitation, encouraging education, violence prevention and the healthy development of the child.

The entire *CERD* addresses racism. It defines racial discrimination, condemns it and mandates states to take certain steps to eliminate it. As regards the immigrant and refugee girl child specifically the extensive provisions of the *CERD* apply to her as equally as to any other Canadian person. She should, however, be of special concern as she is often the victim of racism, and is a particularly vulnerable rights-holder under the *CERD*.

Canada is also party to the *Vienna Declaration*, which addresses racism, racial discrimination and xenophobia. The *Declaration* articulates the elimination of these forms of discrimination as a priority task for the international community. It calls upon states to take effective measures to prevent and combat them.

Racism and the Girl Child in Canada

I have a teacher who hates Hispanic kids. (Participant in immigrant and refugee youth focus group) (Kunz & Hanvey, 2000: "In Their Own Words")

In 1996, 24.3% of the visible minority population was under the age of 15, and *the majority of these youth were immigrants* (Kobayashi et al., 1998:4). For a large number of immigrant and refugee girl children racism is a key factor in their experiences of marginalization. Although there is a paucity of research and statistical data on the effects of race and racism on children (and the girl child specifically) in Canada, several areas of concern have emerged in the work which has been completed (Jiwani, 1999a:23; Kobayashi et al., 1998:8).

Issues of race and racism in relation to the immigrant and refugee child experience have been identified as "... major areas of public policy concern that will gain increasing importance in the coming decades" (Kobayashi et al., 1998:5). In a recent series of focus groups involving visible

minority immigrant and refugee youth "(m)ost of the focus group participants reported experiencing racism and bigotry." At the same time, however, the participants noted that racial discrimination in Canada is "generally disguised" (Kunz & Hanvey, 2000:"Highlights").

Younger participants in the focus group spoke of poor treatment at school by both teachers and other students, while older participants addressed difficulties in obtaining employment,⁽⁴⁶⁾ and harassment by the police because of their physical appearance (Kunz & Hanvey, 2000:"In Their Own Words"). At the level of the individual experience of the girl child, the interaction of racism and sexism create an environment in which "... racialized girls are inferiorized and ... (where) they internalize dominant values which embody a rejection of the self and their cultural communities" (Jiwani, 1999a:25). Research has shown that the experiences of young women of colour are deeply informed by their experiences of racism and their understanding of race. It has been asserted that this in itself, creates a profoundly different set of experiences for young, visible minority women than those of young woman situated in the dominant culture (Wright, 1998:221, 228). A visible minority girl child is often confronted with the task of forming an identity within the context of two cultures which both devalue or sexualize women and girls, while attempting to navigate the racism of mainstream society and media. The result, in some recent focus groups with immigrant and refugee girls, is an inability to identify and therefore resist, all but the most blatant forms of racism or sexism, such as name-calling.

The dire effects of racism on youth in British Columbia were made public in the 2000 report of the Children's Commissioner. Four immigrant teenagers were among fifteen suicide deaths of youth reviewed in the recent report. Evidence in each of these four suicides indicates that the strains of acculturation and the racist behaviour of their classmates significantly contributed to these youths taking their lives. Commissioner Paul Pallan cites extreme social isolation as a factor. "Social isolation is a risk in suicide. Youth who are already isolated from their country of origin may also be isolated from their culture, from their parents and from their peers" (British Columbia Children's Commission, 2001). The report breaks down behaviours usually described as "bullying" into the specific racial and gendered elements that affected these four particular youths. Pallan also emphasizes the need for culturally appropriate and available services to help immigrant youth in crisis. In each of these four cases inadequate or unsuitable services were cited as contributing factors (British Columbia Children's Commission, 2000:1-2).

G) MEDIA INFLUENCE / LITERACY

Canada is party to the *CRC* which contains specific provisions on media literacy, education and content. Article 17 recognizes the impact of the mass media, and mandates that states "shall" ensure that children have access to material from a diversity of national and international sources, especially those which promote the well-being of children. Article 17 mandates states particularly to encourage mass media to disseminate information of social and cultural benefit, encourage cooperation in the production and exchange of material from diverse cultural sources, encourage the production and dissemination of children's books, encourage the mass media to have regard for the linguistic needs of minority children and indigenous children and encourage the development of guidelines for the protection of children from information or material which is "injurious to his or her well-being."

Media and the Girl Child in Canada

We're always terrorists in the movies. (Participant in focus group with immigrant and refugee youth) (Kunz & Hanvey, 2000:"In Their Own Words")

Closely linked to the media's role in racializing immigrant and refugee girls and young women of colour, is the role which media plays in sending messages about all of those who fall outside of the

dominant culture, and the effect that these norms have on all girl children. The use of cultural stereotypes in television and films has been noted as having a negative impact on immigrant and refugee children, both in terms of their self-image and in terms of peer acceptance. "You would think that everyone in Africa is starving to death and living in huts. That's not the case. In cities, for example, we have things like mass transit systems" (Kunz & Hanvey, 2000:"In Their Own Words"). When these types of racializing messages are combined with sexist media content, the impact on the immigrant and refugee girl child can be extreme.

The media plays an important role in the shaping of adolescent girls' sense of selfworth, "... there are strong societal messages about who is or is not desirable, significantly impacting the self-identity, feelings of self-worth and ultimately the overall health of adolescent girls ..." (Manhas, 2000:6). Media stereotypes devalue the girl child (Russell, 1998:108). Negative body image and eating disorders may often be the result of "... constantly bombarding young women with thinness messages and images ..." (Tipper, 1997:36). The media perpetuates images of beauty which conform to a North American standard of "... the lean, long-legged ..." (Sarigiana, 1993:142) and "heroine chic" (Basow, 1999:35). This standard of beauty, although unrealistic, unattainable, and damaging for all young women, is completely incongruous with the experience of the girl child whose skin and hair colour or other physical characteristics do not "match" the standard. Resulting self-consciousness about body image and physical characteristics contribute to low self-esteem and eating disorders⁽⁴⁷⁾ (Sarigiana, 1993:143).

A recent report on Canada's obligations under the *CRC* point to increased Internet access to "... exploitative, racist and sexist information ..." as a major concern, and calls for schools to develop media literacy and critical thinking within their curriculum (Canadian Coalition for the Rights of Children, 2000:16). The preceding theme of racism and the following theme of education are closely linked to concerns around the influence of media on the self-image and social location of the girl child within Canadian society.

H) EDUCATION

The *CRC* deals extensively with a child's right to education. Under the *CRC* a child has the right to freedom of expression, including the right to express him or herself in any media and the right to access many kinds of information and ideas. The child has a right to education, and to this end states must make educational and vocational information available to all children, and take measures to ensure attendance at school. Once in school, children have a right to be disciplined only in a manner consistent with the child's dignity and in conformity with other provisions of the *CRC*.

Article 29 is a lengthy provision whereby states agree upon the content of a child's education. Curriculum is mandated to include the development of a child's personality, a respect for human rights and freedoms, respect for the child's parents, cultural identity and language (in both the child's country of origin and the country in which the child currently lives). The instrument also mandates the preparation of the child for life in a free society including an understanding of peace, equality among the sexes and friendship among people of different national, ethnic, religious, etc. groups, and finally a respect for the natural environment.

The *CEDAW* mandates that states "shall" take measures to modify social and cultural patterns of conduct which are based upon the idea that women are inferior or ideas based upon stereotypes of men and women. The *CEDAW* also requires states to take steps to eliminate discrimination against women in the field of education, particularly that any stereotyped roles of men and women be eliminated from all aspects of education by revising textbooks and teaching methods. The convention also requires states to take steps to reduce the female dropout rates and to organize programs for women who have left school prematurely.

The *CERD* requires states to adopt effective measures in education and teaching which are designed to combat prejudices which lead to racial discrimination, and to promote friendship and understanding among national, racial and ethnic groups.

The *ECOSOC* recognizes everyone's right to education, and all States party to the covenant agree that education should be directed toward the full development of human personality, a sense of dignity and the furtherance of human rights and freedoms. Education shall also help people to participate freely in a free society and promote friendship among ethnic, religious, national or racial groups and further the United Nations promotions of peace.

Non-treaty instruments also speak to education. For instance the *Declaration on the Elimination of Violence Against Women* asks states to push to end violence against women by using education to modify the social and cultural conduct of men and women to eliminate prejudices and customary practices which perpetuate the inferior position of women.

The *Vienna Declaration* emphasizes the importance of education, and the importance of incorporating human rights education programs into curriculum. The *Declaration* also states that education "should" promote understanding, tolerance and peace between nations, religious groups and racial groups and encourage the United Nations activities in pursuit of these objectives. The *Declaration* calls upon states to be active in disseminating information on human rights and that this "should" be integrated into educational policies at the **national** level. Responsibility for education in Canada rests with provincial governments. Due to the domestic constitutional barriers to implementation mentioned above, the provincial governments are not bound by *Declarations* in the same manner as the federal government, creating a gap between the instrument and its effective implementation in Canada.

Education and the Girl Child in Canada

... the kids in my class are not always kind to me, particularly in some of the remarks they make. A couple of boys especially keep referring to me as "Chinese chink" and asking when I'm going back to Taiwan. (Participant in focus group with Vietnamese immigrant and refugee girls) (Mogg, 1991:136)

The girl child will spend a huge portion of her formative years in Canadian schools, and be strongly influenced by her experiences there. "School is the center of these young people's lives" (Kunz & Hanvey, 2000: "Highlights"). While there are few concerns about actual access to public education,⁽⁴⁸⁾ real concerns do emerge when we examine such issues as: what is being taught and how; violence in the school; and treatment of the immigrant and refugee girl child by students and staff.

Provincial and territorial governments are responsible for education, therefore the experiences of the girl child across Canada may vary. Literature and focus groups from several parts of the country however, have shown similar shortcomings across the board.

Isolation once again emerges as a significant theme in the experience of the immigrant and refugee girl child. School, especially high school, can be a daunting experience for many children, but the combination of a new language and culture, the loss of a homeland, friends and family, coupled with experiences of racism and/or sexism in their new environment can be overwhelming for the immigrant and refugee girl child. Three factors are consistently identified as contributing the girl child's sense of isolation within the school environment: rejection by other students; the behaviour and policies of teachers, staff and administrators; and the curriculum itself.

Racism, taunting and bullying by other students creates a sense of not belonging and feelings of

marginalization among immigrant and refugee youth in Canada (Kunz & Hanvey, 2000:"Highlights"; Mogg, 1991:136). As will be discussed below, the lack of effective antiracist, anti-sexist and anti-homophobic education in schools has been identified as a significant problem across Canada, perhaps contributing to these types of violence in schools.

The actions and attitudes of students are mirrored in the behaviour and policies of some teachers, staff and administrators. In discussing problems of language, ostracism, racism or cultural adaptation the participants in a recent focus group of immigrant and refugee youth agreed that "... teachers and other staff constituted part of the problem, rather than being providers of solutions." They agreed that teachers could be racist, and provided examples which had made a negative impact on their adjustment to life in Canada (Kunz & Hanvey, 2000:"Highlights").

For the girl child, racism can be compounded in the classroom with sexism. "Canadian studies show that girls do not receive equal education. Girls receive less respect and less attention in the classroom than boys" (Russell, 1998:100). Immigrant and refugee children, academics and policy analysts alike have roundly criticized curriculum itself. A deficiency of effective antiracist, anti-sexist and anti-homophobic material, culturally and racially specific programming, as well as a lack of information on student's fundamental rights and responsibilities have been noted in schools across Canada.

A U.S. resource guide for dealing with youth at risk points to a lack of cultural and race specific curriculum as the primary source of estrangement for visible minority students (Capuzzi, 1996:212). These results were repeated in a Canadian study focussing on girl children of colour in Canadian schools. Students felt that *their* experiences were not taught, which reduced their sense of belonging within the school system (Kelly, 1998:130-132).

Schools rarely live up to guarantees in the *CRC* that mandate space, money and time to validate the cultural identity of the child.⁽⁴⁹⁾ The translation of multiculturalism into a one-day celebration of music, food and dress from "other" cultures privatizes notions of culture and ethnicity. A true reflection of these rights would include publicly funded services and support for the girl child in her own heritage language or culture.

Beyond inclusion of culturally and racially diverse material in classrooms and in schoolyards, *anti-racist* education is lacking. Although "(e)fforts have been made across jurisdictions to eliminate racial, ethnic, cultural, gender and socio-economic biases ... and to promote multiculturalism, diversity and anti-discrimination in schools" (Canadian Coalition for the Rights of Children, 2000:15), immigrant and refugee youth still see a serious need for programs which promote racial and cultural tolerance and understanding (Kunz & Hanvey, 2000:"In Their Own Words"). The Canadian Council of Ministers of Education has also recommended "... increasing emphasis ... on promoting tolerance and understanding" (Canadian Coalition for the Rights of Children, 2000:15).

More broadly, education on human rights, citizenship and the values embodied in United Nations human rights instruments and Canada's *Charter of Rights and Freedoms* appears to be lacking. While many Canadian schools do promote multiculturalism and diversity (the effectiveness of these programs and policies will be discussed below), initiatives which address children's human rights, governments' obligations to them, and their obligations to one another is absent in all but a very few schools. Many of the programs which do exist are "pilot projects" which receive sporadic funding (Canadian Coalition for the Rights of Children, 2000:5, 10, 15, 32, 132). An understanding of these basic human rights helps to illuminate the importance to society of battling against racism, sexism, and homophobia, and puts the individual child's experience in the context of globally acknowledged values and standards.

Similarly a gendered perspective and anti-sexist education are missing from the classroom, especially

in the area of violence against girls and women (Canadian Coalition for the Rights of Children, 2000:77, 88; Haskell and Randall, 2000; Lonsway, 1996:229). Education against gendered stereotypes and gendered violence are available inconsistently across the country. Internationally gender sensitivity in classrooms has been identified as a key area for improvement in the educational experience of the girl child (Working Groups on Girls, 1995:1). Research has indicated that the tacit acceptance of sexual harassment in the classroom, coupled with a "secret curriculum" which shapes how girls view their intellectual ability (particularly in Math and Science) deeply affects the educational experience and self-esteem of the girl child (Tipper, 1997:37-38). Biases and stereotypes which devalue the girl child may be unconsciously replicated in "acceptable" behaviours and teaching methods. Curriculum which directly challenges these behaviours and norms may provide needed insight and empowerment to both girl and boy children.

Such omissions from our classrooms may be considered to be a breach of Canada's obligations under the *CRC*. In a recent report on Canada's implementation of the *CRC* the paucity of anti-racist, anti-homophobic and anti-violence education in Canadian schools was cited as a problem in implementation. The authors noted that "(t)he development of respect for equality, human rights, cultural diversity and the environment are recognized in policy, but not necessarily reflected in practice" (Canadian Coalition for the Rights of Children, 2000:16).

A recent report entitled *Impacts of Immigration on Education in British Columbia: An Analysis of Efforts to Implement Policies of Multiculturalism in Schools* (Wideen and Bernard, 1999) goes beyond pointing to gaps in curriculum, and takes a close look at curriculum and policies actually being employed in British Columbia. First, the findings indicate that policy makers at the upper levels are attempting to make substantive change "... through a series of technical adjustments, rather than through systematic change" (Wideen and Bernard, 1999:8). Secondly, the authors found a disregard of and lack of understanding by policy makers of the complex interactions of the teachers, students, staff and administrators in the contexts of multiculturalism and "school culture." Finally, paralleling the commentary of the Canadian Coalition for the Rights of Children's observations, they found that policy on multiculturalism designed by administrators was not being understood or implemented at the school or classroom level due to a breakdown in bureaucratic communication. The *existence* of these ineffective policies, they conclude "... creates an illusion that the problem of systematic racism, discrimination, et al. have been satisfactorily resolved" (Wideen and Bernard, 1999:11). One may draw a parallel with the rhetoric of the Canadian government vis à vis human rights at the international level, and the lived experiences of racism, sexism, ageism and homophobia of the girl child in Canada.

D) SERVICES

Canada is party to the *CRC* and *ECOSOC*, which speak to the issue of service provision. The *CRC* requires states to take measures to implement the provisions of the *CRC* to the full extent of their available resources. The *Convention* requires states to take a large number of measures which will benefit the immigrant and refugee girl child, if meaningfully implemented. The *ECOSOC* recognizes the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.

At the non-treaty instrument level both the *Declaration on the Elimination of Violence Against Women* and the *Beijing Declaration* address service provision. The *Declaration on the Elimination of Violence Against Women* states that states "should" condemn violence against women, and take measures to eliminate it, including: that women who have been subjected to violence and their children are provided with specialized assistance to promote their safety; that government budgets contain adequate resources for activities related to the elimination of violence against women; and that the role of the women's movement be recognized and that their work be enhanced and facilitated.

The states which participated in the *Beijing Declaration* make a commitment to ensure that a **gender perspective** is reflected in their policies and programs.

Services and the Girl Child in Canada

... so here you have a sixteen-year-old who was living with her mom and stepfather, and, lets say, didn't like the environment, and left and went out into the streets and has basically been living with boyfriends. And you see her with bruises, and phone social workers to report on this, but she is not in care so there is this huge gap ... she doesn't get anything. (Participant in service-provider focus group, Whitehorse) (Jiwani, 2000:Appendix II, 10)

The accessibility and availability of health, counselling, settlement, anti-violence and other services are important resources for all Canadians. As outlined above the girl child faces numerous and unique challenges in her development and, therefore, the provision of such services becomes a vital link to her survival.

Several factors have been identified as impeding the girl child's access to services in Canada, including funding (and a subsequent lack of programming), culturally insensitive programs and/or service providers, and a lack of gender and age-specific programs designed to deal with the unique social location of the immigrant and refugee girl child.

Many immigrant and refugee girl children feel unable to access school counselling services - an important resource and outlet. Counsellors often fundamentally misunderstand the role of family in the lives of the immigrant and refugee girl child, and fail to take into account culturally defined roles of men and women (Handa, 1997:94). Language may be another barrier. Other immigrant and refugee youth avoid accessing the services of school guidance counsellors as they view them as part of a control mechanism exercised either by their parents or by mainstream society. They feel that what they tell their counsellors in confidence may be told to their parents, or "used" by the school administration against them (Handa, 1997:94; Kunz & Hanvey, 2000:"In Their Own Words"). The results of this isolation include an increase in depression, eating disorders, alcoholism and suicide attempts, as the girl child is caught "... between ineffective 'white' peer support, mainstream social service agencies, and school assistance" (Handa, 1997:34).

This same unwillingness to use services which are seen as culturally insensitive is mirrored in the reluctance of parents of immigrant and refugee children. Instead "(m)any young immigrants said that they and their families relied a great deal on support and guidance from other family members and friends, as well as from other members of their ethnic group who were already living in Canada" (Kunz & Hanvey, 2000:"In Their Own Words").⁽⁵⁰⁾ Similar reluctance to disclose or seek help for domestic violence among immigrant and visible minority women has been linked to issues of racism and cultural insensitivity among service providers (Janovicek, 2000; National Association of Women and the Law, 1999:15). There is an urgent need to develop programming which immigrant and visible minority women and girls are able to access.

Many services, from basic needs such as shelters for street-involved youth, to counselling, to anti-violence and health services lack a girl-specific focus. For a variety of reasons the unique needs of the girl child are difficult to meet for service providers and programs.

A series of focus groups with girls aged 13-18, and those who provide services to them, was held in British Columbia and Yukon. Both the girls and their service providers named a lack of gender- and age-sensitive programs as major obstacles to preventing violence and promoting the health of the female child in these regions. Legal complications involving age,⁽⁵¹⁾ backlash against gender-specific programs and services, lack of funding and inaccessibility of services were all cited

as serious barriers to meeting the needs of the female child (The Alliance of Five Research Centres, 1998:1-7). The immigrant and refugee girl child faces the compounded effects of race, age and gender barriers in accessing services in Canada.

Access to health services, including information on sexuality and reproductive health, is also an area of concern. Geographic location (isolation) and funding are significant factors in service delivery (Canadian Coalition for the Rights of Children, 2000:4, Committee on the Rights of the Child, 1995:128). Little research has been done on the importance of culturally appropriate delivery of health services for the girl child, but adult research in the same area indicates that cultural sensitivity and accessibility are of huge importance in whether or not these services are used (Masi, 1993; Matsuoka and Sorenson, 1991). There is a need to make different cultural and ethnic communities partners in research and service provisions (Anderson, 1986). Social isolation has also been cited as a major problem in an immigrant family's access to health care (Kobayashi et al., 1998:9)

Settlement services for immigrant and refugee families are generally provided by NGOs with government funding. Due to uneven and sporadic funding the services may vary from area to area. Settlement services are offered for only one year in Canada (Canadian Coalition for the Rights of Children, 2000:114).

J) THE REFUGEE GIRL CHILD

Refugee girls are in double jeopardy because they are children and they are refugees. (McCallin, XI)

Canada's most basic obligations to refugees are outlined in the *Refugee Convention*. As previously mentioned they include only very basic rights and obligations once the refugee is landed within Canada. The refugee girl child, however, is also the subject of all other international instruments discussed above, making her rights as a Canadian much more meaningful than those outlined in the *Refugee Convention*. For instance the *CRC* calls for States Parties to "... take all appropriate measures to promote physical and psychological recovery and social reintegration of a child victim of ... abuse, exploitation, torture ... or armed conflicts."⁽⁵²⁾

The situation of the refugee girl child must, at many points, be differentiated from the situation of the immigrant girl child. A refugee girl child can find a place in Canada under law only if she and/or her family have a "well founded fear of being persecuted"⁽⁵³⁾ in their country of origin. This may mean ethnic violence, war, disappearances, political violence or government policies which foster violence against women. An immigrant girl child does not *necessarily* carry with her such an arduous history. The refugee girl child is likely to have encountered violence, persecution, threats, hunger, disease, incarceration or torture simply by virtue of meeting this legal test. Her needs, as a survivor of various forms of persecution, are going to be different from those of many immigrant girls.

In the area of health services, refugees may be at more of a disadvantage than their immigrant counterparts. Studies have indicated a need for health care which is specific to refugee health concerns, including treatment for HIV, rape as a war crime, and injuries related to warfare and war-related trauma. There is also a serious need for health care to take into account gender-related injuries, and treatments for refugees from differing areas of conflict (Kobayashi et al., 1998:10).

Refugee children face increased health risks compared to immigrant children (Beiser et al., 1998:54). Little research has been done which differentiates not only between immigrants and refugees in terms of health, needed services and adaptation, but also along gender and/or age lines. Both Canadian immigration authorities and the United Nations recognize that "... these gender-specific needs require further study and development" (*Guidelines*, 1993; Office of the United Nations High Commissioner for Refugees, 1991).

There are no national standards for settlement services for refugees (which last only one year), and the result is often a minimum level of support from the government, and reliance on NGOs to fill the gaps (Coalition for the Rights of Children, 2000:4-5, 114). At the level of being accepted into Canada, the process can take up to thirteen months, which is an extremely long time in the life of a child (Coalition for the Rights of Children, 2000:16). Provision of medical and other services while awaiting status is generally limited to the basics, and entire families may be incarcerated during the wait. There are no statistics kept on the number of refugee children living in detention in Canada, and no detention standards set for their incarceration (Coalition for the Rights of Children, 2000:4-5). These types of administrative restraints, which have an adverse effect on refugee children, have been noted with concern by the United Nations Committee on the Rights of the Child in their recent evaluation of Canada's compliance with the *CRC* (Committee on the Rights of the Child, 1995:"Concerns").

Endnotes:

²⁸ For instance the ICCP requires that the Convention itself be applied equally to men and women (Article 3), and provides a general prohibition against discrimination (Article 26).

²⁹ The differential impact of Canada's immigration laws on immigrant and refugee girl children attempting to gain entry to Canada is beyond the scope of this paper.

³⁰ The convention also prohibits discrimination based upon a protected characteristic of a child's parent or legal guardian.

³¹ UN CEDAW Committee, Concluding Observations, 16th Session, 29 February 1997.

³² I have not uncovered statistics that break down visible minority children into immigrant or non-immigrant. It is significant to note, however, that in 1993, 24.3% of the visible minority population was under 15, and the majority of these were immigrant children and children of immigrants (Beiser et al, 1998b:4).

³³ The ability of immigrant and refugee adults to obtain well-paid employment is effected by Canada's restrictions regarding acknowledgement of professional credentials from other jurisdictions. See Refugee Convention (1951) Article 19 which mandates States to allow refugees "treatment as favorable as possible" in allowing qualified professionals to practice a "liberal profession."

³⁴ See section below on violence and the immigrant and refugee girl child. These types of negative economic effects are compounded by the factors discussed in that section.

³⁵ "It has been estimated that there are between one and ten million children involved in the international sex trade" (Jiwani, 1999b:35).

³⁶ Now section 212(1)(a) of the *Criminal Code*.

³⁷ Held in Victoria, BC, March 7-12, 1998.

³⁸ For the purposes of this discussion the term "immigrant and refugee" includes those girl children who are in Canada illegally, as trafficked children.

³⁹ It is difficult to ascertain the number of immigrant and refugee girl children involved in such activities as child prostitution, etc. Due to the nature of the activity data is not readily available, and that which is does not differentiate between girls, boys and women (see Special Rapporteur on the Sale of Children, 1999: par. 150).

⁴⁰ See also: Elizabeth Dietz, "Violence Against Women in the United States: An International Solution" 13 *Ariz. J Int'l & Comp.L.* at 577. There has been some debate around whether States can, in fact, be held responsible for

the private acts of individuals, as is the case in domestic violence. The consensus among recent commentators is that, combined with General Recommendation Number 19, international law allows for State responsibility in such situations. See for example: R. Cook, "Accountability in International Law for Violations of Women's Rights By Non-State actors," in D.G. Dallmayer, ed., *Reconceiving Reality: Women and International Law*, American Association of International Law, 1993; Joan Fitzpatrick, "The Use of international Human Rights Norms to Combat Violence Against Women," in R. Cook, ed., *Human Rights of Women*, 9. Philadelphia: University of Pennsylvania Press, 1994; Ulrich, 2000.

41. United Nations, *Violence Against Women in the Family*. New York: United Nations, 1989. UN Sales No E.89.IV.5.

42. Ibid. at 3.

43. *Valasquez Rodriguez v Honduras*, Inter-American Court of Human Rights, Ser C, No 4, Judgement of 29 July 1988, (1989) 28 ILM 291.

44. Learning English or French upon coming to Canada was cited as the primary challenge by most young people in a recent series of focus groups with immigrant and refugee youth (Kunz & Hanvey, 2000: "In Their Own Words").

45. It should be noted, however, that 96% of immigrants live in urban areas, with 48.4% living in Toronto and Vancouver combined (Kobayashi et al., 1998: 3)

46. An alarming observation in light of the previous discussion of immigrant and refugee families living in poverty.

47. Although the phenomenon warrants much more study as to the role of racism, sexism and media influence, it should be noted here that Asian girls between 16 and 25 have a suicide rate three times higher than the national average in the United States (Imam, 1999:146).

48. Two notable exceptions to this are: incarcerated refugee children and, at the high school level, high drop out rates for racialized girl children due to the stresses of coping with racism and sexism in the school environment. Refugee children whose families or guardians have not yet been granted the right to stay in Canada may be incarcerated. Although by law they are permitted, and required to attend school, immigration lawyers have reported serious delays in granting these children student authorization papers (Canadian Coalition on the Rights of Children, 2000: 17). For information on early school leaving of the racialized girl child see: Status of Women, 1997:38, Capuzzi, 1996:210; and Kunz & Hanvey, 2000. It has been asserted that Article 10 of CEDAW mandates states to reduce female dropout rates (Bernard, 1996:9).

49. Article 29.

50. An American study dealing with Salvadoran immigrants showed similar reluctance to use State provided services, instead creating their own legal and quasi-legal services within their own communities, with limited funding. Susan B. Coutin, "Denationalization, Inclusion and Exclusion: Negotiating the Boundaries of Belonging" Vol. 7:585, 2000 *Indiana J of Global Legal Studies*, at 586.

51. Programs or legislation define "child" differently depending on the regime. The result of this is that the girl child may find herself "falling through the cracks" because she is too young to receive "women's" services but too old to receive "children's services," while her parents are no longer legally obliged to provide her with support (Jiwani et al., 1998:7).

52. Article 39.

53. *Refugee Convention (1951)*, Article 1(2).

From Rhetoric to Reality

V. CONCLUSION

International human rights instruments which Canada is bound to implement purport to protect the immigrant and refugee girl child in Canada from poverty, racism, sexism, homophobia and violence. Canada, in fact, has become a leader on the world stage in emphasizing the importance of children's rights, as well as pushing for gender equity in all aspects of society.

This rhetoric at the international level is mediated by legislation and policy implemented by federal, provincial, territorial and municipal governments across Canada. It is these policies and laws which translate the immigrant and refugee girl child's international human rights into lived reality. The lived reality of the immigrant and refugee girl child often does not reflect her guaranteed human rights as they are articulated by international human rights instruments, and by Canadian governments in accordance with those human rights norms.

The lived reality of poverty, racism, sexism, homophobia and violence of the immigrant and refugee girl child in Canada belies the rhetoric of international human rights instruments. Government and policy makers are able to rely on human rights norms as they are written in many public forums, including international human rights organizations. The marginalized position of the girl child effectively silences her in these arenas as she is unable to provide the contrast between what is written and what is experienced. The marginalizing factors which human rights law purports to address, effectively prevent her from speaking up when those laws are violated. Her vulnerability makes it easier for Canada to pay lip service to human rights law protecting her rights, while failing to effectively implement them at home, with little or no penalty.

Canadian advocates for the human rights of women and girls must begin to use and understand Canada's international legal obligations, in order to further their fight against violence and inequality. "... (I)t is helpful for women's' rights advocates to demystify the instruments and mechanisms available in the international human rights system and to provide this information so that activists can make an informed choice about when to incorporate international standards into advocacy strategies" (Bazilli, 2000:1).

*From Rhetoric to Reality***VI. APPENDICES⁽⁵⁴⁾**

- **APPENDIX 1: Lack of Gendered Data**
- **APPENDIX 2: Poverty**
- **APPENDIX 3: Sexual Exploitation and Trafficking of Children**
- **APPENDIX 4: Violence**
- **APPENDIX 5: Racism**
- **APPENDIX 6: Media Influence and Literacy**
- **APPENDIX 7: Education**
- **APPENDIX 8: Services**
- **APPENDIX 9: Recommendations**

**APPENDIX 1:
Lack of Gendered Data**

NON-TREATY INSTRUMENTS

Declaration on the Elimination of Violence Against Women

Article 4

... States should pursue by all appropriate means and without delay a policy of eliminating violence against women and, to this end, should:

(k) Promote research, *collect data and compile statistics*, especially concerning domestic violence, relating to the prevalence of different forms of violence against women and encourage research on the causes, nature, seriousness and consequences of violence against women and on the effectiveness of measures implemented to prevent and redress violence against women; those statistics and findings of research will be made public; (emphasis added)

**APPENDIX 2:
Poverty**

TREATY INSTRUMENTS

Convention on the Rights of the Child (CRC)

Article 2

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

...

Article 6

2. States shall ensure to the maximum extent possible the survival and development of the child.

...

Article 27

1. States Parties recognize the right of every child to a standard of living adequate for the child's physical, mental, spiritual, moral and social development.

2. The parent(s) or others responsible for the child have the primary responsibility to secure, within their abilities and financial capabilities, the conditions of living necessary for the child's development.

3. States Parties, in accordance with national conditions and within their means, shall take appropriate measures to assist parents and others responsible for the child to implement this right and shall in case of need provide material assistance and support programs, particularly with regard to nutrition, clothing and housing.

...

International Covenant on Economic, Social and Cultural Rights (ECOSOC)

Article 7

The States Parties to present Covenant recognize the right of everyone to the enjoyment of just and favorable conditions of work to ensure, in particular:

(a) remuneration which provides all workers as a minimum with:

(i) Fair wages and equal remuneration for work of equal value without distinction of any kind, in particular women being guaranteed conditions of work not inferior to those enjoyed by men, and equal pay for equal work;

(ii) A decent living for themselves and their families in accordance with the provisions of the present Covenant

...

Article 11

(1) The States Parties to the present Convention recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing

and housing, and to the continuous improvement of living conditions.

NON-TREATY INSTRUMENTS

Vienna Declaration and Program of Action

Article 15

The existence of widespread extreme poverty inhibits the full and effective enjoyment of human rights; its immediate alleviation and eventual elimination must remain a high priority for the international community.

...

Article 25

The World Conference on Human Rights affirms that extreme poverty and social exclusion constitute a violation of human dignity and that urgent steps are necessary to achieve better knowledge of extreme poverty and its causes, including those related to the problem of development, in order to promote the human rights of the poorest, and to put an end to extreme poverty and social exclusion and to promote the enjoyment of the fruits of social progress. It is essential for States to foster participation by the poorest people in the decision-making process by the community in which they live, the promotion of human rights and efforts to combat extreme poverty.

...

Beijing Declaration

1) We, the governments participating in the Fourth World Conference on Women,

...

Are convinced that:

16. Eradication of poverty based on sustained economic growth, social development and environmental protection and social justice required the involvement of women in economic and social development, equal opportunities and full and equal participation of women and men as agents and beneficiaries of people-centered sustainable development;

...

Are determined to:

26. Promote women's economic independence, including employment, and eradicate the persistent and increasing burden of poverty on women by addressing the structural causes of poverty through changes in economic structures, ensuring equal access for all women, including those in rural areas, as vital development agents, to productive resources, opportunities and public services;

...

35. Ensure women's equal access to economic resources, including land and credit, science and technology, vocational training, information, communication and markets,

as means to further the advancement and empowerment of women and girls, including through the enhancement of their capabilities to enjoy the benefit of equal access to these resources, *inter alia*, by means of international cooperation;

...

Beijing Platform for Action

Global Framework

Paragraph 22

One fourth of all households worldwide are headed by women and many other households are dependent on female income even where men are present. Female-maintained households are very often among the poorest because of wage discrimination, occupational segregation patterns in the labor market and other gender-based barriers. Family disintegration, population movements between urban and rural areas within countries, international migration, war and internal displacements are factors contributing to the rise of the female-headed household.

APPENDIX 3: Sexual Exploitation and Trafficking of Children

TREATY INSTRUMENTS

Convention on the Rights of the Child (CRC)

Article 11

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

...

Article 34

State Parties undertake to protect the child from all forms of sexual exploitation and sexual abuse. For these purposes, States Parties shall in particular take all appropriate national, bilateral and multilateral measures to prevent: (a) The inducement or coercion of a child to engage in any unlawful sexual activity; (b) The exploitative use of children in prostitution or other unlawful sexual practices; (c) The exploitative use of children in pornographic performances or materials.

Article 35

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

Article 36

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

...

Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)

Article 6

State Parties shall take all appropriate measures, including legislation, to suppress all forms of traffic in women and exploitation of prostitution of women.

NON-TREATY INSTRUMENTS

Stockholm Declaration

[Please see entire document.] Selected excerpts:

The Commitment

12. The World Convention reiterates its commitment to the rights of the child, bearing in mind the Convention on the Rights of the Child, and calls upon all States in cooperation with national and international organizations and civil society to:

Accord high priority to action against the commercial exploitation of children and allocate adequate resources for this purpose;

...

Develop and Implement comprehensive gender-sensitive plans and programs to prevent the commercial sexual exploitation of children, to protect and assist child victims and to facilitate their recovery and reintegration into society;

...

Declaration on the Elimination of Violence Against Women

Article 3

Violence against women shall be understood to encompass, but not be limited to, the following:

(b) Physical, sexual and psychological violence occurring within the general community, including rape, sexual abuse, sexual harassment and intimidation at work, in educational institutions and elsewhere, *trafficking in women and forced prostitution*; (emphasis added)

...

Article 4

... States should pursue by all appropriate means and without delay a policy of eliminating violence against women and, to this end, should:

(l) Adopt measures directed towards the elimination of violence against women who are especially vulnerable to violence;

...

Vienna Declaration and Programme of Action

Paragraph 18

...

Gender-based violence and all forms of sexual harassment and *exploitation*, including those resulting from cultural prejudice and *international trafficking*, are incompatible with the dignity and worth of the human person, and must be eliminated. This can be achieved by legal measures and through national action and international cooperation in such fields as economic and social development, education, safe maternity and health care, and social support...(emphasis added)

...

Paragraph 21

...

...In all actions concerning children, non-discrimination and the best interest of the child shall be primary considerations and the views of the child given due weight. National and international mechanisms and programs should be strengthened for the defense and protection of children, in particular, *the girl child*, abandoned children, street children, *economically and sexually exploited children, including through child pornography, child prostitution* or sale of organs, children victims of diseases...International cooperation and solidarity should be promoted to support the implementation of the Convention and the rights of the child should be a priority in the United Nations system-wide action on human rights. (Emphasis added).

...

APPENDIX 4:

Violence

TREATY INSTRUMENTS

Convention on the Rights of the Child (CRC)

Article 19

1. States Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent (s), legal guardian(s) or any other person who has the care of the child.
2. Such protective measures should, as appropriate, include effective procedures for the establishment of social programs to provide necessary support for the child and for those

who have care of the child, as well as for other forms of prevention and for identification, reporting, referral, investigation, treatment and follow-up of instances of child maltreatment described heretofore, and, as appropriate, for judicial involvement.

...

Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)

Articles 1 and 2

These articles define discrimination against women, condemn it, and form an agreement between parties to take numerous legislated and administrative actions to eliminate discrimination.

Although the *CEDAW* does not refer to violence against women it can certainly be argued that gendered violence constitutes discrimination against women and girls and must be addressed under this instrument.

NON-TREATY INSTRUMENTS

Vienna Declaration and Programme of Action

Paragraph 18

...

Gender-based violence and all forms of sexual harassment and exploitation, including those resulting from cultural prejudice and international trafficking, are incompatible with the dignity and worth of the human person, and must be eliminated. This can be achieved by legal measures and through national action and international cooperation in such fields as economic and social development, education, safe maternity and health care, and social support...(emphasis added)

...

The World Conference on Human Rights urges Governments, institutions, intergovernmental and non-governmental organizations to intensify their efforts for the protection and promotion of human rights of women and the girl child.

...

Declaration on the Elimination of Violence Against Women

The entire declaration deals with the definition and condemnation of, and mandates steps which States Parties will take towards elimination of various forms of violence against women. Selections below are intended to highlight portions of the Declaration, which should be referred to in its entirety for full comprehension.

Article 2

Violence against women shall be understood to encompass, but not be limited to, the following:

(a) Physical, sexual and psychological violence occurring in the family, including

battering, sexual abuse of female children in the household, dowry-related violence, marital rape, female genital mutilation and other traditional practices harmful to women, non-spousal violence and violence related to exploitation;

(b) Physical, sexual and psychological violence occurring within the general community, including rape, sexual abuse, sexual harassment and intimidation at work, in educational institutions and elsewhere, trafficking in women and forced prostitution;

(c) Physical, sexual and psychological violence perpetrated or condoned by the State, wherever it occurs.

Article 3

Women are entitled to the equal enjoyment and protection of all human rights and fundamental freedoms in the political, cultural, civil or any other field. These rights include, *inter alia*:

a) The right to life;

...

c) The right to liberty and security of the person;

...

f) The right to the highest standard attainable of physical and mental health

...

Article 4

States should condemn violence against women and should not invoke any custom, tradition or religious consideration to avoid their obligations with respect to its elimination. States should pursue by all appropriate means and without delay a policy of eliminating violence against women. ...

Beijing Declaration

Paragraph 1

We, the Governments participating in the Fourth World Conference on Women,

...

Paragraph 29

... are determined to:

Prevent and eliminate all forms of violence against women and girls;

...

APPENDIX 5: Racism

TREATY INSTRUMENTS

Convention on the Rights of the Child (CRC)

Article 2

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

...

Convention on the Elimination of All Forms of Racial Discrimination (CERD)

The Convention defines racial discrimination, condemns it and mandates States Parties to take or refrain from taking certain steps to eliminate racial discrimination. Steps include a prohibition against State sponsored or condoned discrimination, to take special measures to promote or protect marginalized racial groups, a prohibition against hate-crimes and hate propaganda, etc.. Below are selected excerpts which have particular relevance to the situation of the girl child in Canada.

...

Article 2

1. States Parties condemn racial discrimination and undertake to pursue by all appropriate means and without delay a policy of eliminating racial discrimination in all its forms and promoting understanding among races, and, to this end:

...

c) Each State Party shall take effective measures to review governmental, national and local policies, and to amend, rescind or nullify any laws and regulations which have the effect of creating or perpetuating racial discrimination wherever it exists;

d) Each State Party shall prohibit and bring to an end, by all appropriate means, including legislation as required by the circumstances, racial discrimination by any persons, group or organization;

...

NON-TREATY INSTRUMENTS

Vienna Declaration and Programme of Action

Paragraph 15

Respect for human rights and for fundamental freedoms without distinction of any kind is a fundamental rule of international human rights law. *The speedy and comprehensive elimination of all forms of racism and racial discrimination, xenophobia and related intolerance* is a priority task for the international community. Governments should take effective measures to prevent and combat them. Groups, institutions, intergovernmental and non-governmental organizations and individuals are urged to intensify their efforts

in cooperating and coordinating their activities against these evils.

...

Paragraph 19

...

The World Conference on Human Rights reaffirms the obligation of States to ensure that persons belonging to minorities may exercise fully and effectively all human rights and fundamental freedoms without any discrimination and in full equality before the law...

The persons belonging to minorities have the right to enjoy their own culture, to profess and practice their own religion and to use their own language in private and in public, freely and without interference or any form of discrimination.

...

APPENDIX 6: Media Influence and Literacy

TREATY INSTRUMENTS

Convention on the Rights of the Child (CRC)

Article 17

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

- (a) Encourage mass media to disseminate information and material of social and cultural benefit to the child and in accordance with Article 29 (regarding self-fulfillment in education);
- (b) Encourage international co-operation in the production, exchange and dissemination of such material information and material from a diversity of cultural, national and international sources;
- (c) Encourage the production and dissemination children's books;
- (d) Encourage the mass media to have particular regard to the linguistic needs of the child who belongs to a minority group or who is indigenous
- (e) Encourage the development of appropriate guidelines for the protection of the child from information and material injurious to his or her well-being...

...

APPENDIX 7: Education

TREATY INSTRUMENTS

Convention on the Rights of the Child (CRC)

Article 13

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

...

Article 28

1) States Parties recognize the right of the child to education, and with a view to achieving this right progressively and on the basis of equal opportunity, they shall, in particular:

...

(e) make educational and vocational information and guidance available and accessible to all children;

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

2). States Parties shall take all appropriate measures to ensure that school discipline is administered in a manner consistent with the child's human dignity and in conformity with the present Convention.⁽⁵⁵⁾

...

Article 29

1. *States Parties agree that the education of a child shall be directed to (a) the development of the child's personality, talents and mental and physical abilities to their fullest potential; (b) the development of respect for human rights and fundamental freedoms, and for the principles enshrined in the Charter of the United Nations; (c) the development of respect for the child's parents, his or her own cultural identity, language and values, for the national values of the country in which the child is living, the country from which he or she may originate and for civilizations different from his or her own; (d) The preparation of the child for responsible life in a free society, in the spirit of understanding, peace, tolerance, equality of the sexes, and friendship among all peoples, ethnic, national and religious groups and persons of indigenous origin; (e) the development of respect for the natural environment.* (emphasis added).

Convention on the Elimination of All forms of Discrimination Against Women (CEDAW)

Article 5

States Parties shall take all appropriate measures:

(a) *To modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women;* (emphasis added)

...

Article 10

States Parties shall take all appropriate measures to eliminate discrimination against women in order to ensure them equal rights with men in the field of *education* and in particular to ensure, on a basis of equality of men and women:

...

c) The elimination of any stereotyped conduct of the roles of men and women at all levels and in all forms of education by encouraging coeducation and other types of education which will help to achieve this aim and, in particular, by the revision of textbooks and school programmes and adaptation of teaching methods;

...

f) The reduction of female student drop-out rates and the organization of programmes for girls and women who have left school prematurely;

Convention on the Elimination of Racial Discrimination (CERD)

Article 7

States Parties undertake to adopt immediate and effective measures, particularly in the fields of *teaching, education, culture an information*, with a view to combating prejudices which lead to racial discrimination and to promoting understanding, tolerance and friendship among nations and racial or ethnic groups ... (emphasis added)

...

International Covenant on Economic, Social and Cultural Rights(ECOSOC)

Article 13

(1) The States Parties to the present Convention recognize the right of everyone to education. They agree that education shall be directed to the full development of the human personality and the sense of its dignity, and shall strengthen the respect for human fundamental rights and freedoms. They further agree that education shall enable all persons to participate effectively in a free society, promote understanding, tolerance and friendship among nations and all racial, ethnic or religious groups, and further the activities of the United Nations for the maintenance of peace.

NON-TREATY INSTRUMENTS

Declaration on the Elimination of Violence Against Women

Article 4

States should condemn violence against women and should not invoke any custom, tradition or religious consideration to avoid their obligations with respect to its elimination. States should pursue by all appropriate means and without delay a policy of eliminating violence against women and, to this end, should:

...

(j) Adopt all appropriate measures, *especially in the field of education*, to modify the social and cultural patterns of conduct of men and women and to eliminate prejudices, customary practices and all other practices based upon the idea of the inferiority or superiority of either of the sexes and on stereotyped roles for men and women; (emphasis added).

...

Vienna Declaration

Paragraph 33

The World Conference on Human Rights reaffirms that States are duty-bound...to ensure that education is aimed at strengthening the respect of human rights and fundamental freedoms. The World Conference on Human Rights emphasizes the importance of incorporating the subject of human rights education programmes and calls upon States to do so. Education should promote understanding, tolerance, peace and friendly relations between the nations and all racial or religious groups and encourage the development of United Nations activities in pursuance of these objectives. Therefore, education on human rights and the dissemination of proper information, both theoretical and practical, play an important role in the promotion of respect of human rights with regard to all individuals without distinction of any kind such as race, sex, language or religion, and this should be integrated in the education policies at the national as well as international levels.

...

APPENDIX 8: Services

TREATY INSTRUMENTS

Convention on the Rights of the Child (CRC)

Article 4

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

the framework of international co-operation.

International Covenant on Economic, Social and Political Rights (ICCP)

Article 12

(1)The States Parties to the present Convention recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.

NON-TREATY INSTRUMENTS

Declaration on the Elimination of Violence Against Women

Article 4

States should condemn violence against women and should not invoke any custom, tradition or religious consideration to avoid their obligations with respect to its elimination. States should pursue by all appropriate means and without delay a policy of eliminating violence against women and, to this end, should:

...

(g) Work to ensure, to the maximum extent feasible in the light of their available resources and, where needed, within the framework of international co-operation, that women subjected to violence and, where appropriate, their children have specialized assistance, such as rehabilitation, assistance in child care and maintenance, treatment, counselling, and health and social services, facilities and programmes as well as support structures, and should take all other appropriate measures to promote their safety and physical and psychological rehabilitation;

(h)Include in the government budgets adequate resources for their activities related to the elimination of violence against women;

...

(o) Recognize the important role of the women's movement and non-governmental organizations world wide in raising awareness and alleviating the problem of violence against women;

(p) Facilitate and enhance the work of the women's movement and non-governmental organizations and cooperate with them at local, national and regional levels;

...

Beijing Declaration and Platform for Action

Paragraph 38

We (The governments participating in the World Conference on Women) Hereby adopt and commit ourselves as Governments to implement the following Platform for Action, *ensuring that a gender perspective is reflected in our policies and programmes...*(emphasis added).

...

APPENDIX 9: Recommendations

LEGAL EDUCATION

Due to the fact that one of the main obstacles to treaty implementation is constitutional the solutions at this level will not be simple, or quickly implemented. Canadians are generally unaware of either their rights under international law, or of the significant barriers to seeing them implemented domestically. At this stage education in both of these areas is urgently needed.

- Create popular education tools about women's equality rights and international human rights instruments for women's and girl's equality-seeking groups. (Bazilli, 2000:15) See for example: D. Stienstra and B. Roberts *Strategies for the Year 2000* (Halifax: Fernwood Publishing, 1995).
- The constitutional divide between federal ratification and provincial implementation of treaties must be eliminated. The first step is to emphasize that this division is a violation of the spirit of the treaties, and include this information in all research which deals with international human rights instruments.
- Develop training tools for lawyers and judges around international legal obligations. (Bazilli, 2000:15).
- Develop and disseminate evaluation tools from within equality-seeking groups(such as shadow reports and report cards) to be submitted to government and the UN during Canada's reporting periods.

INTERNATIONAL OBLIGATIONS

When reporting on sexism, racism, ageism and homo-phobia in Canada activists must place them in the context of international law and name them as human rights violations. Continued emphasis of international law will make it a more effective tool.

In discussing international law and human rights instruments activists must speak to the barriers to its implementation, and the implications of this for their findings.

- Use international human rights law and norms to interpret the *Charter* and other domestic laws in domestic equality litigation. This should include the Conventions themselves, General Recommendations of relevant Committees, Concluding Remarks of relevant Committees on Canada's reports under Conventions and any documented discussion on Canada's reports between Canada and the relevant Committee.
- Have improved methods of consultation with governments about Canada's international positions. (Bazilli, 2000:15).

POVERTY

- Create safe spaces for immigrant and refugee girl children. These spaces should be for girls only.
- Educate Canadians on the extreme poverty levels of immigrant and refugee families and visible minority groups generally. Emphasize that this is the product of international and domestic institutionalized racism.
- Provide culturally appropriate, consistent and sufficient services to female-headed lone parent households, including employment training, childcare and financial assistance.

- Educate immigrant and refugee and visible minority youth on their rights under the various provincial and the federal *Human Rights Acts*. It is imperative that these youth be equipped to recognize when racism is a factor in hiring, and use their legislated recourse to address the wrongdoing.

SERVICES

- Provide programs and services which are age and gender specific to the girl child.
- Provide programs and services which are culturally appropriate and accessible for immigrant and refugee and visible minority girls.
- Provide consistent and sufficient funding for such programs.
- Develop comprehensive, national criteria and standards for such programs.
- In the area of health care develop culturally sensitive service provision, in partnership with the cultural and ethnic communities being served.

EDUCATION

- Include comprehensive anti-racist, anti-sexist, anti-homophobic curriculum materials and programs in schools.
- Develop comprehensive strategies to increase awareness of human rights, especially children's rights.
- Include culturally diverse materials and programs in schools.
- Develop curricula which empowers the girl child and helps her to combat and cope with her daily experiences of racism and sexism in the media, in the streets, at school and at home.
- Due to the fact that education policy and legislation is under provincial jurisdiction, there is the potential for extremely varied compliance with these recommendations. Consultation and discussion between provinces on these issues may result in at least a loose standard of implementation.

MEDIA LITERACY

- Develop curricula which builds children's ability to decipher, question and resist the sexist, racist and homophobic messages of the media (especially the Internet).
- Encourage governments at all levels to meet our obligations under international law regarding exposing children to harmful media content. Encourage them to see sexism, racism and homophobia as harmful.

RESEARCH

- Conduct in-depth reviews of how specific legislation and programs are affecting the immigrant and refugee girl child.
- In conducting research on "women" and/or "children" data must be delineated by age and gender to provide a comprehensive picture of the situation of the girl child.
- Initiate a standardized, comprehensive and gendered data collection program about children at all levels of government.

Endnotes:

⁵⁴. As noted above, the appendices contain only excerpts from relevant international instruments. The reader is encouraged to consult the entire document.

55. Section 43 of the Canadian *Criminal Code* allows "reasonable force" to be used against children in disciplinary situations. Many child advocates feel that this violates this Convention, including the United Nations Committee on the Rights of the Child.

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