



Action No. S097767
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

IN THE MATTER OF:

THE CONSTITUTIONAL QUESTION ACT, R.S.B.C. 1996, C.68

AND IN THE MATTER OF:

THE CANADIAN CHARTER OF RIGHTS AND FREEDOMS

AND IN THE MATTER OF:

A REFERENCE BY THE LIEUTENANT GOVERNOR IN
COUNCIL, SET OUT IN ORDER IN COUNCIL NO. 553, DATED
OCTOBER 22, 2009, CONCERNING THE CONSTITUTIONALITY
OF S. 293 OF THE *CRIMINAL CODE OF CANADA*, R.S.C., 1985, c.
C-46

**CLOSING SUBMISSIONS OF THE CANADIAN COALITION FOR THE RIGHTS OF
CHILDREN AND THE DAVID ASPER CENTRE FOR CONSTITUTIONAL RIGHTS**

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I. INTRODUCTION

1. The Canadian Coalition for the Rights of Children (“CCRC”) and the David Asper Centre for Constitutional Rights (“Asper Centre”) (collectively, “these Interested Persons”) submit that the Reference questions before this Honourable Court require careful consideration of the rights of children under the *Canadian Charter of Rights and Freedoms* (“*Charter*”) and at international law.
2. The evidence adduced on the Reference supports the conclusion that the practice of polygamy – particularly in the form of polygyny in a sustained and strongly communal setting– is systematically harmful and violates children’s fundamental and constitutional rights. Indeed, in order to perpetuate the essential aspects of its character, the polygamous community must by necessity: render exit extremely difficult; limit educational opportunities for most members; impose strict punishments for independent thought; and adhere to rigid gender roles that oppress, in particular, women and girls. In so doing, these communities disregard children’s rights in an ongoing and endemic manner.
3. The evidence further demonstrates that scattered legislative approaches to protecting children, which focus on harm rather than rights, have largely failed children in communities such as Bountiful. Provincial child protection, education regulations, and labour laws have failed to protect generations of children in Bountiful; excessive deference has been paid to parental religious rights, which have been privileged over children’s rights and the principle of the best interests of the child.
4. Infringements of children’s rights in polygamous communities are irreversible; they burden the children into adulthood and throughout their lives. The CCRC and Asper Centre argue that these harms to children are infringements of their human rights under the *Charter* and international law, in particular, the United Nations’ *Convention on the Right of the Child* (the “*Convention*”), which Canada has ratified. They are not, in other words, simply harms to the children’s interests. All children are entitled to full recognition of their rights and respect for their inherent human dignity as maturing individuals. Children are not mere objects to be manipulated for the benefit of the state, their faith or cultural communities, or their families.

5. In brief, these Interested Persons submit that:

- (i) the *Charter* is presumed to provide equal or greater protection to that provided by similar provisions in international instruments binding on Canada (the “presumption of minimum protection”) and therefore, in respect of children’s rights, must be interpreted by specific reference to the *Convention*;
- (ii) the *Charter* does not protect conduct that poses a risk of material, physical, or psychological harm to others; Parliament need not justify limits on such conduct;
- (iii) the *Charter* must be read as a whole, so that no right is privileged over another;
- (iv) section 293 serves an important role in protecting children’s rights from the infringements that are pervasive to polygamy;
- (v) to the extent that s. 293 is found to breach *Charter* rights of persons engaged in polygamy, it is thus justified to the extent that it serves to protect children’s constitutional and international human rights; and, finally,
- (vi) to the extent that s. 293 might be inconsistent with the Constitution in any way, the just and appropriate way for this Court to answer the Reference questions – consistent with the presumption of constitutionality and the onus of proof – is by declaring the circumstances of the inconsistency, rather than attempting to delineate the many situations in which it may apply consistently with the *Charter*.

6. The evidence is scant as to the incidence or impact of polygamy practised in Canada other than in the communal setting addressed in these submissions. To the extent that this Honourable Court may determine that the prohibition is unconstitutional in its application to polygamous or polyamorous practices that do not occasion the harms addressed in these submissions, it would be inappropriate to strike the provision in its entirety, with a suspended declaration of invalidity. While West Coast LEAF suggests an attractive alternative of reading the provision down to apply only to “exploitative polygamy”, sufficient proof of “exploitation” has been difficult to document for the purposes of prosecution, even in regard to the sexual offenses that appear to have been committed against children in Bountiful.

II. EVIDENCE OF HARMS TO THE RIGHTS OF CHILDREN

1. Overview

7. The CCRC and Asper Centre rely on the recitation of the evidence by the Attorney General of British Columbia (“AGBC”), but add the following to assist the Court by factoring in analysis of the children’s rights that are at stake. Reliance is also placed on the recitation of the facts by the Attorney General of Canada (“AGC”) as to the impact of polygamy

internationally. Indeed, in paragraph 12 of its submission, the AGC notes that harms depicted in the international literature “have manifest themselves in Canada”; to which can be added, with children as the primary victims.

8. The evidence demonstrates that polygamy has a fundamental and direct impact on children – and most particularly on their rights. Girls, even pre-teen girls, have been inducted into polygamous marriage. Boys have been expelled from their communities and lost contact with their families. And, on the evidence, all children within a polygamous family face an unacceptable risk of abuse. Children have also been affected by practices which keep a ‘pool’ of girls in place for marriage and a ‘pool’ of children in place as workers. These practices violate children’s fundamental human rights.
9. Some of the most egregious examples of harm to children associated with the practice of polygamy occur within the insular fundamentalist communities which hold polygamy as a central tenet of their religious belief. The evidence shows that such a community will require mechanisms for renewal involving marriage arrangements and domestic and economic arrangements to support the large families arising under polygamy. The treatment of children within these arrangements is antithetical to the very concept of children as rights bearers.
10. To provide a robust analysis of the impact on rights in this case, the evidence needs to be analyzed in relation to the Charter, interpreted by Canada’s international obligations with regard to the rights of children. The practices revealed in this case demonstrate that children’s rights to equality, security of the person and certain fundamental freedoms are overlapping and interdependent, as well as grounded in the fundamental principles found in the *Convention*, such as the principle of the best interests of the child, the right of child participation through consideration of his or her views, and the due consideration of the developmental stages and needs of children (their evolving capacities). The evidence also supports the significance of the salutary effect of s. 293 on the totality of children’s rights affected by the practice of polygamy, particularly in the form addressed in these submissions.

2. Children's physical and psychological security

(i) Child marriage

11. These Interested Persons agree with the AGBC that the evidence of marriage of teenage girls within Bountiful and related FLDS communities is “overwhelming”.¹ The evidence of the practices surrounding and facilitating such marriages in the polygamous community clearly demonstrates systemic discrimination against girls on the basis of gender (and age) and repeated violations of their physical and psychological security.
12. In Bountiful, the community leaders arrange the marriages, and the father assents.² The selected male may be significantly older than the girl, with age gaps in the range of 15 years or more not unusual, on the evidence filed in these proceedings.³ Age gaps of this order point to a significant power imbalance within the relationship. Some marriages have been to men in positions of authority within the community.⁴ They therefore raise the very real spectre of a man's having sex with a child who is under his trust or authority by virtue of his position, or under his dependency by virtue of her age. Either scenario would constitute sexual exploitation.
13. During the hearing, it was contested whether the girls had the option to refuse the marriage and FLDS witnesses testified that the girl had a “choice”. On balance, the girls have no option at all, given that the choice fundamentally comes down to doing ‘the Lord's will – or not.’⁵

¹ The evidence on age of marriage is set out in detail in the AGBC's submissions. The evidence came from AGBC, FLDS and Amicus' witnesses. See, for example, Campbell #2, para. 21 (“a lot” of girls married at 16) and Batchelor, 20 Jan 2011, p. 34 (age of survey respondents).

² As an example, see Hanna #1, paras. 22 & 29 (Warren Jeffs' and fathers' role in arranging marriages of Children A-C).

³ There was a parental age gap of 14+ years or more for 18 of the 85 birth records attached to the Klette affidavit, or approx. 20%. There was a parental age gap of 20+ years for 11 of the 85 birth records attached to the Klette affidavit, or approx 13%. See Klette #2, Exhibit A, pp. 4, 13, 16, 17, 22, 30, 37, 38, 46, 47, 58, 64, 67, 69, 73, 74, 75 & 78; (14 year + age disparity); Exhibit A, pp. 16, 17, 30, 37, 38, 46, 47, 58, 69, 74 & 75 (20 year+ age disparity).

⁴ Witness #4 and Ruth Lane gave evidence that that had occurred: see Witness #4, 26 Jan 2011, p. 20; & Ruth Lane, 5 January 2011, pp.91-92; and Blackmore #2 para 5 (Blackmore's date of birth).

⁵ See, for example, Witness #3, 26 Jan 2011, p. 55 (choice is to do or not do the Lord's will); and Witness #11, para 8 (will have a choice on who he marries because wants to marry whoever God reveals to the prophet).

14. The circumstances do not just entail religious coercion as summarised by Professor Campbell.⁶ Concrete punitive steps have also been taken against girls who have asserted the right to make their own decisions regarding their sexual behaviour and marriage. W. John Walsh conceded that girls could be expelled for refusing a marriage.⁷ Teresa Wall was sent on “reform” to Canada at 13 for refusing to marry the prophet Rulon Jeffs. She was kept as a labourer in conditions of privation at the post-mill in Sundre, Alberta until she was 17, and threatened with being cast out unless she acquiesced to marriage.⁸ Other girls have been married off in punitive or ‘corrective’ circumstances after having asserted their autonomy in other ways.⁹
15. Witnesses have spoken of the terror and misery they have experienced from their lack of control over a matter as fundamental as marriage.¹⁰ Witnesses have also spoken of the trauma and anxiety they suffered because they had no prior knowledge about sex.¹¹ Susie Barlow described her shock on learning about sex and reproduction after marrying at 16, her subsequent refusal to have sex with her husband, and the pressure brought to bear on her by Warren Jeffs to do so.¹² Teresa Wall described the trauma of having to assume a sexual relationship with a stranger without any prior sexual knowledge, and also her pain in hearing other married girls describe their trauma around sex.¹³
16. In sum, child marriage is an actual consequence of polygamy as practised in Bountiful and within the FLDS. It occurs within a religious context that legitimises and institutionalises the practice. It gives rise to an unacceptable risk of sexual abuse, exploitation and forced

⁶ Campbell #2, para. 164

⁷ Walsh, 5 Jan 2011, pp. 44 & 46 - 47

⁸ Teresa Wall, 8 Dec 2010, pp. 24 – 26. Brent Jeffs described how a girl he knew was sent to Canada to reform for reasons relating to sexual behaviour (talking to Jeffs): Brent Jeffs, 5 January 2011, p.75.

⁹ Brenda Jensen #1 p. 14 (disobedient girls would be married to a man who was “very firm, very firm in his discipline of his wives and children); Kathleen Mackert, 8 Dec 2010, p. 96 (her sister, Rowena, was punished for rebellion by being married to her step-brother).

¹⁰ Kathleen Mackert, 8 Dec 2010, pp.90-92 (describing nightmares, terror, & feeling of no control over her destiny); Teresa Wall, 8 Dec 2010, p. 31 – 32 (describing her terror at community BBQs where Blackmore would send men to collect their brides; & her observations of other girls’ misery); p. 34 (unable to remember details of wedding day because ‘half-out of it’ and crying).

¹¹ Witness #3, 26 Jan 2011, p.50; Teresa Wall, 8 Dec 2010, p.32; Susie Barlow #1, para. 13; Sarah Hammon, 8 Dec 2010, p73; Richard Ream, 7 Jan 2011, p. 8 (“we’re not going to explain how to protect yourself if you chose to participate in it because you’re not going to be participating in it because you don’t know what it is”) & p. 9; & Rowena Mackert, 8 Dec 2010, pp. 6-7.

¹² Susie Barlow #1, paras. 13 – 15

¹³ Teresa Wall, 8 Dec 2010, pp.32 - 33

marriage of girls by persons in position of authority and others. It entails the most intimate form of physical impact on a girl, and has extensive negative and intrusive psychological and emotional effects. In most instances the children's parents participate or acquiescence in the practice.

17. Child marriage poses an extensive risk to girls' international human rights including girls' equality rights, girls' rights to health and development, girls' rights to be free from traditional practices prejudicial to their health, and girls' rights to educational and employment opportunities.¹⁴

Convention, art. 2, 6(2), 12, 13, 19, 24, 28, 29, 34, 35 & 36

18. The evidence herein illustrates impacts on the s. 7 rights of children, given content by Canada's obligations to protect the rights of children at international law. Relevant components of Canada's international obligations include: the child's right to development; the child's right to be cared for by his or her parents; the right of a child not to be separated from a parent against his or her will except in accordance with judicial process; the child's right to express his or her views freely on all matters affecting the child and have those views given due weight; the right to health including the right to be free from traditional practices that are prejudicial to health; rights to education; and the right to be protected from sexual exploitation.

Convention, arts. 5, 6, 7, 9, 12, 13, 19, 24, 28, 29 & 34

¹⁴ Vandergrift #2, Exhibit A. pp. 30 – 31, United Nations, Economic and Social Council, E/CN.4/2002/73/Add.2, 24 April 2009, "Study on freedom of religion or belief and the status of women in light of religion and traditions" at paras. 113 – 114; and, Exhibit D at. pp. 137-41, 151ff, 167-69, "Child Marriage and the Law" (UNICEF, 2008) ("UNICEF Report on Early Marriage"); Exhibit F, "World Report on Violence Against Children: Secretary-General's Study on Violence Against Children" (United Nations: Geneva, 2006) (the "Global Study on Violence") at p.248.

(ii) **Child Trafficking**

19. The evidence shows that children have been moved across international boundaries in connection with polygamy; trafficking entails a serious human rights violation.¹⁵

See, for example, *Convention*, art. 6, 7 & 35

Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery, art. 1(d)
20. As set out in the AGBC's submissions, girls as young as 15 have been brought into Canada from the USA, and girls as young as 12 and 13 have been taken from Canada to the USA, in connection with polygamous marriage.
21. When judged by reference to age or age-disparities, young American-born girls figure prominently among the most vulnerable of the Bountiful cohort of mothers identified by Klette. Over 80% of the girls who gave birth at 16 were American-born. Some of this group included girls who conceived at 15.¹⁶ Over 70% of the relationships involving an age disparity of 14+ years were with American-born mothers. The largest age disparity was 29 years between a father and a 16 year old American born mother.¹⁷
22. Marriage is not the only reason why American FLDS children have been sent to Canada. They have also been sent to "reform" by working in a Canadian FLDS operation, for minimal pay with no participation in formal schooling under the guidance of a senior member of the

¹⁵ The UN Special Rapporteur on the human rights aspects of the victims of trafficking in persons, especially women and children has drawn an express link between polygamy and trafficking on the basis of Prof Campbell's research. See Vandergrift #2, Exhibit E, pp. 209 - 211, Report of the Special Rapporteur on the human rights aspects of the victims of trafficking in persons, especially women and children, UN General Assembly, A/HRC/4/23, 24 Jan 2007 at paras 28, 31 & 36.

¹⁶ There were 11 girls who gave birth at the age of 16 in the Klette cohort of 85 Bountiful birth records – 9 of those 11 girls were born in America. Also, 4 of those 9 girls had their babies within sufficient proximity to their 16th birthday to raise the possibility of contraception at 15. Klette #2, Exhibit A, pp. 26, 29, 31, 33, 34, 38, 47, 68 & 84 (births where the mother was 16 and born in the USA); pp. 29 & 31 (births where the mother was 16 and born in the USA, birth approx 3-4 months after girls' 16th birthday); pp. 29, 42 & 60 (subsequent births for this girl); pp. 31, 53 & 71 (subsequent births for this girl); pp. 26 & 68 (births where the mother was 16 and born in the USA, birth approx. 8 months after girls' 16th birthday.)

¹⁷ There were 18 births where there was a parental age disparity of 14 years or more. 13 of those 18 mothers were born in the USA, or over 70%. Klette #2, Exhibit A, pp. 4, 16, 17, 30, 37, 38, 47, 58, 64, 67, 73, 74 & 78 (14+ year age disparity & mother born in the USA); pp. 13 & 22 (14+ year age disparity and mother born in Alberta); pp. 46, 69 & 75 (14+ year age disparity and mother born in Creston); p. 74 (greatest age disparity).

church. Both boys¹⁸ and girls have been sent across the border – the girls for reasons involving relationships with boys, or marriage.¹⁹

23. Teresa Wall's experience is also relevant in the context of trafficking. She was first sent to Canada when she was 12, put to work cooking and cleaning and not sent on to school.²⁰ She was sent back to Canada when she was 13, and put to work at heavy labour throwing logs into mill machinery. She was not paid. She was usually on the night shift. She did not receive schooling. She was not provided with adequate winter-gear and therefore sustained frostbite.²¹ The deprivation was purposeful and intended to break her will. Her statement illustrates the impact of her trafficked status on her 'acquiescence' to marriage:

I had lots of aspirations and things I wanted to do but, you know, I realized that there was no way that was going to happen for me. Winston had basically said either you're getting married this weekend or we're kicking you out. I was -- I was not legally in Canada. I had no papers to have me legally there. 17 years old. I had no money. I had nowhere to go. I -- and I knew that there was no way I was going to be able to get any work being there. I had nowhere to go in Salt Lake. My parents were definitely not going to take me. So I felt very trapped and compelled -- like I felt I had no other choice then to get married. So I was married at 17.²²

(iii) Child motherhood

24. Child pregnancy is a consequence of child marriage – and another way in which the practice of polygamy violates children's rights. The UNICEF Report on Early Marriage has noted the following:

... Child brides do not have the autonomy to negotiate with their spouse, nor the information and services to delay the birth of their children. This results in the denial of the right to decide freely and responsibly on the number and spacing of their children which is recognized by CEDAW.²³

¹⁸ Richard Ream, 7 Jan 2011, pp. 17 – 18; Don Fischer, 13 Jan 2011, pp.13 – 16; Truman Oler, 18 Jan 2011, pp.9-10; Teresa Wall, 8 Dec 2010, p. 25 (younger brothers also on reform in Canada) & p. 49.

¹⁹ Teresa Wall, 8 Dec 2010, pp. 24 – 26. See also the girl mentioned by Brent Jeffs: Brent Jeffs, 5 January 2011, p.75.

²⁰ Teresa Wall, 8 Dec 2010, pp. 23 - 24

²¹ Teresa Wall, 8 Dec 2010, pp. 24 – 27 & 29

²² Teresa Wall, 8 Dec 2010, p. 29

²³ Vandergrift #2, Exhibit D, supra, p.138

25. There is a well-established link between early pregnancy and restriction of a girl's access to educational and employment opportunities. Teen pregnancy therefore affects a girl's right of development. It also poses a risk to the girl's right to health.²⁴
26. Teen pregnancy carries with it established health risks for the girl and her infant. The AGC sets out the negative health effects of early sexual activity on girls, and the health risks of a shortened inter-birth interval. Teen pregnancy also has ongoing negative economic consequences for the girl, and negative social implications for the girl and infant.²⁵
27. The evidence in these proceedings demonstrates that girls in polygamous communities have little power over something as vital to their personal autonomy and deeply personal as conception and pregnancy.²⁶ That poses an unacceptable risk to a girl's liberty and security of the person, as it negatively impacts a girl's right to health and development, including access to family planning education and services; her right to express her views freely and have them duly take into account; and her rights to information and education.

Convention, art. 6, 12, 13, 24, 28, 29 & 34

(iv) Control and expulsion of boys

28. Social exclusion, homelessness and family breakdown are factors that can render a teenager more vulnerable to abuse, violence and exploitation, and more vulnerable to self-destructive behaviour. They can also limit the teenager's ability to make individual healthy behaviour choices and hamper the child's health and development.²⁷

²⁴ Vandergrift #2, Exhibit D, supra, pp. 138, 154 & 169

²⁵ Vandergrift #2, Exhibit D, supra at p.169; Isbister #1, Exhibit F, Tab 6 "Teenage Pregnancy", Heather Dryburgh, Health Reports, Vol 12, No. 1, Statistics Canada, Catalogue 82-003, (undated); Isbister #1, Exhibit F, Tab 7 "Life after teenage motherhood", May Luong, May 2008 Perspectives, Statistics Canada, Catalogue no. 75-001-X; Isbister #1, Exhibit F, Tab 8 "Second or subsequent births to teenagers", Michelle Rotermann, Health Reports, Vol. 18, No. 1, Feb 2007, Statistics Canada Catalogue 82-003; Campbell #2, para 35 (Bountiful midwives recognise childbearing and childrearing can impose a significant toll on women's physical and mental health)

²⁶ Witness #2, 25 Jan 2011, p. 64 (did not talk to her daughter about using birth control when she married at 15); Kendall #1, Exhibit C, p.8 (contraceptive advice and service provision not accepted by the community); Teresa Wall, 8 Dec 2010, pp. 29 – 32; Rowena Mackert, 8 Dec 2010, p. 9

²⁷ CRC/GC/2003/4, 1 July 2003, General Comment No. 4 (2003), "Adolescent health and development in the context of the *Convention on the Rights of the Child*", at paras 34, 36 & 38

29. The evidence on expulsion of boys has been disputed by the FLDS. Their witnesses say that boys are not expelled for marriage, but choose to leave because of the church's strict rules.²⁸ There is no dispute that the FLDS imposes tight controls on its young boys. The boys are taught to stay away from girls from the time they are young children. The boys are also taught that they must await the prophet's choice on who they will marry, on the express understanding that they may not turn down their proposed wife and the implicit understanding that if they follow all church precepts and contribute financially to the community they will earn themselves wives.²⁹ In this way, the community obtains a financial benefit while the 'mathematical aspect' of polygamy is managed: only those who are most obedient end up staying. Those who assert their autonomy leave or are expelled.
30. Truman Oler described these matters in his evidence, noting that once a boy was offered a bride, if he turned her down he had to leave. Starting first with the offer of marriage, he stated :

You did not know who they were going to place you with and you had no choice in the matter whatsoever. and I saw times where guys who were obviously in the same situation I was in were presented with ... I guess told that they were going to marry this person ... if they rejected basically they were not allowed -- they would be kicked out. ... They would be told that because ... they're not wholeheartedly involved in the church and doing exactly what they're told then they would no longer be welcome. And I don't know, from what I seen in my personal experience it's probably about the time they're ready to go anyways. They're pretty much done with it anyways. But they're basically told, yeah, you gotta go.³⁰

31. The boys who leave end up losing close contact with their families and lose the benefit of their family's support through their maturation process. They also lose the only community they have known. The departure appears to be typically difficult because they have been taught to fear the outside world, they have nowhere to go, they may consider they are damned for leaving the church, they will typically not have much education or other resources to draw on, and often go through a period of self-destructive behaviour before they

²⁸ Witness #6, para. 13 (chose to leave because of the strict rules, other boys also leave for that reason)

²⁹ See Truman Oler #1, para. 16; & Truman Oler, 18 Jan 2011, pp. 25 – 26. The boys are typically paid at a very low rate: Truman Oler #1, paras 10 & 11; Truman Oler, 18 January 2011 pp.17 – 21; Don Fischer, 13 Jan 2011, p.15.

³⁰ Truman Oler, 18 Jan 2011, pp. 7 - 8

find their way.³¹ Truman Oler's testimony demonstrated the pain that these young men can experience in the process.

32. The need for tight controls arises out of the need to restrain boys' interaction with girls, so as to preserve polygamous marriage opportunities. The tight controls in turn create an environment which stultifies boys' growth into independent and autonomous people. Some boys are directly expelled. Don Fischer and his brother, and Rich Ream were expelled.³² Other boys leave because there is not room to grow and develop in accordance with their aspirations and priorities, such as Truman Oler – they simply can't accept the prophet's choice of a spouse for them.
33. Boys therefore are harmed by infringements of their right to equality, with respect to access to their family and home community. They also suffer from impairment of their right to liberty, with respect to fundamental decisions about how to lead their lives, and security of the person in leaving home with little to no resources or support.
34. Boys are harmed by infringements of their rights to health and development. In losing access to their parents, they lose their right to be cared for by their parents; and their right not to be separated from a parent against their will except in accordance with judicial process, and to an important source of protection from abuse, violence and exploitation. They will have to be self-supporting, likely cannot easily resume schooling and so face risks to their rights to education.

Convention, arts. 6, 7, 9, 19, 24, 28, 29 & 34

(v) Child maltreatment and protection

35. The AGBC and AGC set out the evidence on the correlation between polygamous family structure and risks to children of abuse and violence.³³ Abuse and violence are threats to a child's right to health and development. The *Convention* strongly imposes a state obligation to take comprehensive measures to protect from all forms of physical or mental violence,

³¹ Truman Oler, 18 Jan 2011, pp. 26 – 27; Truman Oler #1, para. 19 – 20, 22 & 26; Don Fischer, 13 Jan 2011, pp. 23 - 24

³² Don Fischer was permitted to 'work his way back in again', before he ultimately decided to leave. Don Fischer, 13 Jan 2011, pp. 18 – 19; Richard Ream, 7 Jan 2011, pp.23-24

³³ See also Nelson #1, detailing allegations of abuse or violence within the Bountiful community that proceeded to a report to Crown Counsel by the RCMP, or a conviction

injury, abuse, neglect, maltreatment or exploitation, including sexual abuse while in the care of parents. Within the analysis of the contextual framework of a parental s.7 claim, Justice L'Heureux-Dubé noted that "protecting children from harm has become a universally accepted goal", citing the *Convention*. She acknowledged that family does not always provide a safe environment for children and that the "state has assumed both the duty and the power to intervene to protect children." The evidence in this case has shown that state mechanisms to protect children or respond to child maltreatment have not been adequate.

Winnipeg Child and Family Services v. K.L.W., [2000] 2 S.C.R. 519 at paras. 73, 75

36. Members of the Bountiful community have acknowledged that abuse 'may' occur. Yet, no one has provided a concrete statement of how the community responds to address child abuse in an effective and immediate way – church leaders, teachers, parents. Despite what must be unexplained absences from school or new admissions, as students have left to become American wives or as they arrived a newly married 15 year old,³⁴ there is no evidence that the schools within the Bountiful community have played a positive role in reporting child sexual abuse. (Mr. Palmer, principal at one of the schools, withdrew his affidavit.)

Child, Family and Community Service Act, R.S.B.C. 1996, c. 46, s. 14

37. It appears that community members do not recognise the coerced marriage of a girl as child abuse. Neither Witness #2 nor Witness #4 perceived that they might have a responsibility to inform the authorities of the marriages involving the 15 year-old sister wife (Witness #4) or her 15 year-old daughter (Witness #2). Mary Batchelor educates fundamentalist Mormon communities about the age of marriage and child abuse. As a younger woman, she did not report Tom Green for his marriage to underage girls although she knew he had underage wives.³⁵

38. Many of the substantiated cases of child maltreatment in the intervention at the Yearning for Zion Ranch entailed the exposure of children to the sexual abuse of other children, primarily

³⁴ Hanna #1; Witness #4, 26 Jan 2011, p.15; Exhibit 146, "Supporting Our Students: A Guide for Independent School Personnel Responding to Child Abuse", undated

³⁵ Witness #4, 26 Jan 2011, pp. 17, 20-21, 29; Witness #2, 25 Jan 2011, p. 38; Batchelor, 20 Jan 2011, pp. 40, 43.

the introduction of child brides into the household.³⁶ The harms to children within polygamous communities include their exposure to the abuse of others within the household, particularly sexual exploitation of girls. The evidence with respect to the exploitation of women and their lack of power in the family, also suggests that they, much like in many domestic abuse situations, lack the power to intervene to protect their children.

39. While the government has shown restraint in intervening in families, the evidence shows reassignment of families by community leaders to be an integral feature of polygamy. More specifically:

- (a) reassignment facilitates the assignment of girls in marriage by breaking down the parent-child bonds that might otherwise prevent it from occurring (Fred Jessop recommending the marriage of his step-daughter Elissa at 13);
- (b) reassignment increases the prophet and FLDS hierarchy's control over the community, which ultimately also assists with facilitating early marriage;
- (c) fears of reassignment may prompt a woman to abandon an initiative which might provide her with opportunities outside of the FLDS community (i.e. through resumption of her education) (Teresa Wall abandoning her plans to resume her education).³⁷

40. Kathleen Mackert and Susie Barlow describe the impacts of reassignment on children.³⁸ There can be no reasonable doubt that it would be a frightening experience for a child, and would infringe their right not to be removed from their parents without judicial process – and potentially their rights of health and development, and rights to protection from abuse and violence.

3. Children's right to equality

41. The CCRC and Asper Centre rely upon the AGBC's treatment of the expert evidence correlating polygamy, and tight controls over and commodification of women and girls. These Interested Persons also adopt the submissions of West Coast LEAF in respect of the equality rights of girls and will not repeat that analysis here.

³⁶ Isbister #1, Exhibit F, Tab 2, "Eldorado Investigation: A Report from the Texas Department of Family and Protective Services", p. 4397

³⁷ Teresa Wall, 8 Dec 2010, pp. 41 – 42; pp. 52 - 53

³⁸ Barlow #1, paras 6 - 9; see also Kathleen Mackert, 8 Dec 2010, p. 110

42. The totality of the evidence demonstrates that the practice of polygamy discriminates against children through sexual stereotyping from a young age and the exploitation of girls in marriage and boys in respect of labour practices. Male children also suffer discrimination as most will not be given the opportunity to live their lives with their birth families in the communities in which they grew up.

4. Children's freedom of thought and expression

43. The CCRC and Asper Centre also rely on the AGBC's treatment of the evidence on obedience, and the role it plays in fostering child compliance with marriage and suppression of critical thinking. One such teaching is the injunction to "keep sweet", which Jorjina Broadbent described as "doing what your husband wants".³⁹ These teachings circumscribe a child's ability to conceive of him or herself as a person who will grow to be in charge of his or her own identity and own direction in life; they therefore impinge on a child's freedom of thought and expression.
44. The CCRC and Asper Centre also rely on the AGBC's treatment of the FLDS teachings on children's sexual distance. These teachings circumscribe the child's ability to conceive of him or herself as a person in charge of their own sexuality and sexual decision making.⁴⁰ This also infringes a child's freedom of thought and expression.
45. A child's ability to recognise him- or herself as an autonomous rights-holding person is also fostered through his or her formal education. Mr. Vanderboom confirmed that he could not positively say that the Bountiful Elementary-Secondary School ("BESS") had actually implemented the provincial curriculum on sexuality, sexual decision making, personal decision making, recognition of sexual abuse, employment and career options, adult life-skills and other personal autonomy matters.⁴¹ Witness #3 confirmed that she did not receive sexual education or basic life skills teaching at BESS. Her further evidence was that: all of the students and staff are FLDS, the education involves daily religious instruction in the FLDS faith, it was common for boys to leave the school with little more than a Grade 9

³⁹ Brenda Jensen, 17 Jan 2011, pp. 23 – 24; Jorjina Broadbent, 7 Jan 2011, pp. 48 – 49

⁴⁰ See Richard Ream, 7 Jan 2011, pp 9 – 10; Brenda Jensen, 17 Jan 2011, pp. 5 – 6, 11

⁴¹ Edward Vanderboom, 9 Feb 2011, pp.13-15.

education, and she could not remember anyone in the community graduating with a Dogwood diploma.⁴²

46. The court may reasonably infer on all the evidence that the provincial curriculum on sexuality was not delivered at BESS; and that the children do not receive an education around matters ultimately pertaining to adult life-skills and decision-making. Such a failure helps depict the wider Canadian society as a frightening place from which the children should retreat. It tacitly directs children towards marriage and employment under FLDS norms regarding polygamy, children's gender roles and children's life expectations. In this way the children are denied the means by which they can conceive of a different life for themselves. The school's failure therefore poses a risk of infringement of children's rights to freedom of thought. It is also inconsistent with a child's rights to an education that will prepare him or her for responsible life in a free society, and develop his or her respect for Canadian national values.
47. In this regard, these Interested Persons note that the preamble to the *Independent School Act* specifically contemplates that children's education will "develop their individual potential" and enable them to "contribute to a healthy, democratic and pluralistic society and a prosperous and sustainable economy".

Independent School Act, R.S.B.C. 1996, c. 216

5. Children's right to healthy development

48. Many articles within the *Convention* focus on the various components necessary to foster the healthy development of children. The practice of polygamy poses serious risks to such healthy child development including the following:
- (i) a failure to give any form of meaningful content to the obligation to ensure that children's best interests are a primary consideration in all matters affecting them;
 - (ii) failures with respect to the protection of children's rights to education;
 - (iii) exposure of children to unsafe or exploitative labour arrangements;
 - (iv) a failure to provide emotional support for the children who have chosen to reject polygamy and to leave the FLDS community; and

⁴² Witness #3, 26 Jan 2011, pp. 31, 43 – 50; see also Witness #4, 26 Jan 2011, pp. 26 – 45

- (v) failure to give priority to needs of children in allocating available resources, to fulfill the right of children to required resources for healthy development.

49. Dr. Lawrence Beall's evidence describes the negative impacts of polygamy on adolescent development in situations where children are oppressed by parental religious beliefs. His evidence on the impact of sexual grooming and the impact on the ability of adolescents to make autonomous choices are set out in the AGBC's submissions. The efforts to control the capacity of children to develop into individuals capable of making autonomous decisions through the control of information, oppressive punishment, expulsion from the community and emotional and sexual abuse are a gross violation of the rights of children and abuse of the powers and responsibilities given to parents under the *Charter* and the *Convention*.

6. Governmental response to the foregoing

50. The authorities have not intervened in any appreciable measure to protect children's rights in Bountiful. This is apparently attributable to a greater care for adult rights over the many children's rights potentially engaged on this question.

51. Mr. Vanderboom confirmed that his office had ensured a child abuse policy had been prepared, but could not confirm that they had read it, let alone tested the standard of its implementation.⁴³

52. Dr. Kendall, the provincial Medical Health Officer, has provided a February 2005 briefing note he prepared on teen pregnancy in Creston. It sets out allegations that "young women are forced into arranged marriages with older men and that young women are brought into Canada from the US as brides-to-be". In that briefing note, Dr. Kendall records:

- (i) He had had a discussion with Jeremy Berland, ADM of the Ministry for Children & Family Development whose ministry was aware of the allegations, had been keeping a "close eye" on the community, had conducted investigations but had never found a child in that community who was in need of protection under Part 3 of the *Child, Family and Community Services Act*;
- (ii) Regional health authority public health staff and Ministry of Health Services staff were similarly aware of the allegations;

⁴³ Edward Vanderboom, 9 Feb 2011, pp. 6, 7.

- (iii) He had had a discussion with Jane Morley, Child and Youth Officer, who expressed her concern but saw “no clear way for addressing the underlying issue of the potential sexual abuse of children”.⁴⁴

53. Between 1999 and 2002, a number of 16-year-old girls in Bountiful gave birth within sufficient proximity to their 16th birthday to raise the possibility, and in 2 cases likelihood, that conception had occurred at 15. As noted above, most of these girls were USA-born.⁴⁵ In 2003, Witness #4 was brought into Canada one week after her 17th birthday and married to a 40-something year old man in a position of authority within the community. Roughly six months later, Witness #4's sister-wife was brought into Canada, at the age of 15, and married to that same man. She had her first baby when she was 17. Both girls attended the Bountiful Elementary-Secondary School (they ‘rode on the bus’ together).⁴⁶ In March 2004, a 13 year old child was removed from Bountiful and taken down to the USA to marry Warren Jeffs. In December 2005, two 12 year old girls were removed from Bountiful to meet the same fate.⁴⁷
54. The above events occurred during, or just after, the period in which Mr. Berland's Ministry was keeping a “close eye” on Bountiful. On the record in these proceedings, no steps were taken to assist the children involved.
55. Mr. Nelson provides evidence of criminal inquiries into matters at Bountiful which sets out RCMP collation of evidence supporting sexual exploitation charges against two Bountiful men. The record indicates that the RCMP had documentary evidence to support proceedings, however Crown Counsel did not approve the charges.⁴⁸ The evidence suggests government paralysis in the face of a potential religious freedom claim by adults within the community, despite evidence of sexual offenses against children. Alternatively, or additionally, the types of crimes being committed prove difficult to prosecute and thus, they alone are an inadequate response to the harms to children associated with polygamous practices within communities such as Bountiful.

⁴⁴ Kendall #1, Exhibit C, pp. 7 – 8

⁴⁵ Klette #1, Exhibit A, pp. 29 & 31 (births approx 3 – 4 months after 16th birthday); pp. 26, 51, 57 & 68 (births approx 8 months after 16th birthday)

⁴⁶ Witness #4, 26 Jan 2011, pp. 12 – 13, 15, 17

⁴⁷ Hanna #1

⁴⁸ Nelson #1, paras. 92 – 97

56. The criminalization of polygamy prevents the proper enforcement of other crimes against children. These Interested Persons agree with the AGC that these crimes are under-reported, but go further to argue that it is precisely the harms to children and the crimes against children that help to drive the practice of polygamy within these communities underground. Decriminalizing polygamy will not suddenly open the floodgates to child abuse reporting. As acknowledged by Mary Batchelor, the fundamentalist polygamist communities do not perceive that child marriage is a form of child abuse. The most recent evidence filed of the trafficking of 12 year old children to the United States to be married to Warren Jeffs, suggests that parents within the community were told to keep it quiet, presumably not because polygamy is illegal, but because it is the sexual abuse of children that is both illegal and abhorrent.⁴⁹
57. Similarly civil marriage laws in respect of the age of marriage provide little protection for children. Civil marriage in BC is not lawfully available for persons under 16 without a court order, and is only available for children between 16 and 18 if both parents consent in writing. Those provisions express society's norm as to the acceptable lower ages for marriage, and reflect the constitutional right of children to mature into individuals who have the right to make fundamental decisions and structure their lives according to their own priorities and aspirations. However, as evidence filed in this case demonstrates, this legislation has little bearing on the practice of polygamy and the age of marriage in the celestial marriages conducted within the polygamous community. John Walsh, in his affidavit, specifically states that the FLDS is uninterested in state recognition of their marriages,⁵⁰ and Angela Campbell in cross-examination acknowledged that at least one mother had no knowledge that she had any ability to consent or oppose her 16 year old daughter's marriage because the community does not view such marriages as legal in the usual sense.⁵¹

Marriage Act, R.S.B.C. 1996, c. 282, ss. 28, 29

⁴⁹ Hanna #1, para. 37

⁵⁰ Walsh, Ex. 77, para. 31

⁵¹ Angela Campbell, 1 Dec 2011, p.28

III. LEGAL ANALYSIS

58. The CCRC and Asper Centre generally support the submissions of the Attorneys General with respect to the application of ss. 7 and 15 of the *Charter* as invoked by adult persons in polygamous relationships. These Interested Persons will focus their submissions instead on the following areas, in order to address general interpretive principles (including the scope of the s. 2 “fundamental freedoms”), the role of international law, and specific rights of children that factor into the *Charter* analysis (including into ss. 7 and 15). These Interested Persons will make six general points in their submissions.

- (i) the *Charter* provides equal or greater protection as analogous international law provisions that are binding on Canada and, therefore, consideration of the *Convention* is essential to the correct interpretation of the *Charter* rights of children – and to the scope of the rights claimed by adults that have a direct impact on the rights of children;
- (ii) there is no constitutional protection for conduct that poses a serious risk of material physical or psychological harm to children (or others);
- (iii) the *Charter* must be interpreted as a whole, and that the scope of the various provisions invoked in the challenge to s. 293 is limited by the correlative rights of children;
- (iv) section 293 serves at least in part to protect children’s rights;
- (v) in any event, the protection of children’s rights under the *Charter* and at international law justifies any limits that s. 293 places on adults’ *Charter* rights; and
- (vi) in either case, s. 293 is constitutionally valid in at least some of its applications. In these circumstances, it is just and reasonable for this Honourable Court to preserve the prohibition on polygamy to the extent possible, and to tailor its responses to the questions so they address s. 293’s frailties rather than attempting the more difficult and speculative task of identifying all those applications in respect of which s. 293 is constitutional.

A. **Scope of the Rights and Freedoms under the *Charter***

1. **Charter Is Presumed to Provide Equal or Greater Protection Than International Human Rights Instruments Canada Has Ratified**

59. The CCRC and Asper Centre agree with the AGC concerning the relevance of international human rights law to the interpretation of the rights and freedoms guaranteed under the *Charter*. These Interested Persons, however, submit that international law plays a different, and more robust, role in *Charter* interpretation. That is, international law is not simply a persuasive body of comparative law: instead, it contains obligations that are binding on Canada, and the *Charter* responds to those obligations by entrenching guarantees of rights and freedoms.

60. Chief Justice Dickson (dissenting but not on this point) suggested this approach in *PSERA* when he held:

International law provides a fertile source of insight into the nature and scope of the freedom of association of workers. Since the close of the Second World War, the protection of the fundamental rights and freedoms of groups and individuals has become a matter of international concern. A body of treaties (or conventions) and customary norms now constitutes an international law of human rights under which the nations of the world have undertaken to adhere to the standards and principles necessary for ensuring freedom, dignity and social justice for their citizens. The *Charter* conforms to the spirit of this contemporary international human rights movement, and it incorporates many of the policies and prescriptions of the various international documents pertaining to human rights.

And, later:

The content of Canada's international human rights obligations is, in my view, an important indicia of the meaning of "the full benefit of the *Charter*'s protection". I believe 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.

Re Public Service Employee Relations Act (Alta.), [1987] 1 S.C.R. 313 at 348, 349
[emphasis added]

See also: *R. v. Big M Drug Mart*, [1984] 1 W.W.R. 625 at 655 (Alta. C.A.) (Belzil J.A.)

61. The Attorney General of Canada, relying on another passage from *PSERA*, submits that international law is “relevant and persuasive”. The primary difference between our respective approaches in practical terms is this:

- under Canada’s “relevant and persuasive” approach, international law is of comparative interest only – like jurisprudence of the U.S. Supreme Court or the European Court of Human Rights;
- under the CCRC and Asper Centre’s approach (which one commentator calls “the presumption of minimum protection”), the content of a *Charter* right is presumptively consistent with analogue rights that are binding upon Canada in the international sphere.

The “relevant and persuasive” approach is helpful in truly comparative situations, where an international norm is analogous but not binding on Canada. It fails, however, to account for the manner in which ratified international treaties bind Canada as a matter of international law.

G. van Ert, *Using International Law in Canadian Courts*, 2d ed. (Toronto: Irwin Law, 2008) at 342-43

See also: *R. v. Zingre*, [1981] 2 S.C.R. 392 at 407, 409-10

62. Moreover, not only does the presumption of minimum protection better recognize the binding nature of treaties ratified by Canada, but it is also supported by case law subsequent to *PSERA*. In other words, although one could isolate language from Dickson C.J.C.’s reasons in that case and argue for a “relevant and persuasive” approach, the thrust of the case law at present in fact favours the presumption of minimum protection.

63. In this connection, when the Supreme Court recently overturned the “labour trilogy” (and vindicated Chief Justice Dickson’s dissent in *PSERA*), one of the bases on which it rejected the former understanding of s. 2(d)’s scope was that “Canada’s adherence to international documents recognizing a right to collective bargaining supports recognition of the right” in the *Charter*. The Court invoked the *PSERA* dissent in this regard, and in particular that passage where the former Chief Justice set out the presumption of minimum protection.

Health Services and Support – Facilities Subsector Bargaining Assn. v. British Columbia, 2007 SCC 27 at paras. 69-70, [2007] 2 S.C.R. 391 (McLachlin C.J.C. and LeBel J.)

See also: *R. v. Hape*, 2007 SCC 26 at para. 55, [2007] 2 S.C.R. 292 (LeBel J.)

64. Notably, Canada’s international law obligations also bear upon the justification analysis under the *Charter*. As Dickson C.J.C. held in *Slaight Communications*, “Canada’s international human rights obligations should inform not only the interpretation of the content of the rights guaranteed by the *Charter* but also the interpretation of what can constitute pressing and substantial s. 1 objectives”. In essence, the obligations are indicative of the standards of free and democratic societies.

Slaight Communications Ltd. v. Davidson, [1989] 1 S.C.R. 1038 at 1056

See also: *R. v. Oakes*, [1986] 1 S.C.R. 103 at 136 (Dickson C.J.C.)

65. Applying this analysis to the rights in the *Charter*, as they pertain to children, requires an interpretation that protects, at a minimum, the rights accepted and ratified by Canada in the *Convention*. Importantly, the *Convention* – like the *Charter* – must also be read as a whole. Effect must be given to the general principles that govern the interpretation of interrelated provisions, and to the acknowledgement that children are rights-holders as individuals. Those guiding principles include the best interests of the child as a primary consideration and respect for the views and wishes of a child. Moreover, they include the consistent theme throughout the *Convention* that the implementation of rights must have due regard to the evolving capacities of the child.

R. Hodgkin and P. Newell, *Implementation Handbook for the Convention on the Rights of the Child* (3d ed.) (UNICEF: Geneva, 2007) at 1, 36-38, 77, 153-54

2. No Protection for Physically or Psychologically Harmful Conduct

66. Conduct that gives rise to, or that poses a serious risk of, material, physical, or psychological harm receives no constitutional protection. Accordingly, where state action places limits on such conduct, no justificatory analysis under s. 1 is required.

67. These Interested Persons take no position as to whether it is necessary to proceed to s. 1 to justify s. 293 as it applies to other circumstances, but they submit that children are entitled to have their fundamental rights upheld in the first instance: where the conduct in question being limited infringes children's *Charter* rights (interpreted consistently with the *Convention*), the justification analysis is neither required nor appropriate.

(i) Section 2(a)

68. Section 2(a) recognizes that everyone is entitled to "freedom of conscience and religion" (subject, of course, to the limits in s. 1). In his judgment in *Big M Drug Mart*, Chief Justice Dickson defined the content of this particular "fundamental freedom" as follows:

The essence of the concept of freedom of religion is the right to entertain such religious beliefs as a person chooses, the right to declare religious beliefs openly and without fear of hindrance or reprisal, and the right to manifest religious belief by worship and practice or by teaching and dissemination.

Big M Drug Mart, [1985] 1 S.C.R. 295 at 336

69. In so doing, although he did not expressly cite it at this juncture, the Chief Justice clearly drew upon the *International Covenant on Civil and Political Rights* ("ICCPR"), article 18 of which states in part:

Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching.

ICCPR ([1976] Can T.S. No. 47), art. 18, para. 1 [emphasis added]

70. As discussed, the Chief Justice's tacit invocation of international law in *Big M* as an interpretive tool to define the scope of rights under the *Charter* was rendered express in *PSERA* and other subsequent cases.

71. The Chief Justice in *Big M* clearly contemplated that the s. 2(a) guarantee would be subject to limitations. In this connection, he held:

The values that underlie our political and philosophic traditions demand that every individual be free to hold and to manifest whatever beliefs and opinions his or her conscience dictates, provided *inter alia* only that such manifestations do not injure his or her neighbours or their parallel rights to hold and manifest beliefs and opinions of their own.

Big M, supra, at 346 [emphasis added]

See also: *Young v. Young*, [1993] 4 S.C.R. 3 at 93-94 (L'Heureux-Dubé J.), 109 (Sopinka J.), 121-22 (McLachlin J.);⁵²

P. (D.) v. S. (C.), [1993] 4 S.C.R. 141 at 182 (L'Heureux-Dubé J.);

Syndicat Northcrest v. Amselem, 2004 SCC 47 at para. 62, [2004] 2 S.C.R. 551 (Iacobucci J.);

Multani v. Commission scolaire Marguerite-Bourgeois, 2006 SCC 6 at para. 26, [2006] 1 S.C.R. 256 (Charron J.)

72. One might at first blush conclude that the Court has not always been consistent as to whether limitations on the freedom of religion are considered at the breach stage (s. 2(a)) or at the justification stage (s. 1). However, the better view is that – insofar as the practice of religious beliefs infringes other individuals' security of the person (*i.e.* constitutes a material interference with their physical or psychological integrity) – the freedom to act upon those beliefs receives no constitutional protection. Indeed, the Court has never suggested the contrary.

R. v. Morgentaler, [1988] 1 S.C.R. 30 at 53-54 (Dickson C.J.C.), 173 (Wilson J.)

73. In *B. (R.)*, Iacobucci and Major JJ. held (in a passage later cited by the majority of the Court in *Trinity Western*):

We are of the view that the constitutional question should be: to what extent can an infant's right to life and health be subordinated to conduct emanating from a parent's religious convictions? With this perspective as a starting point, we find that the appellants do not benefit from the protection of s. 2(a) of the *Charter* since a parent's freedom of religion does not include the imposition upon the child of religious practices which threaten the safety, health or life of the child.

⁵² In her reasons for judgment, Justice McLachlin held that "the guarantees of religious freedom and expressive freedom in the *Charter* do not protect conduct which violates the best interests of the child test" and that "conduct which poses a risk of harm to the child will not be protected".

Just as there are limits to the ambit of freedom of expression (e.g. s. 2(b) does not protect violent acts: *R. v. Zundel*, [1992] 2 S.C.R. 731, at pp. 753 and 801; *R. v. Keegstra*, [1990] 3 S.C.R. 697, at pp. 732 and 830), so are there limits to the scope of s. 2(a), especially so when this provision is called upon to protect activity that threatens the physical or psychological well-being of others. In other words, although the freedom of belief may be broad, the freedom to act upon those beliefs is considerably narrower, and it is the latter freedom at issue in this case. The fact that “freedom” does not operate in a vacuum was underscored by Dickson J. (as he then was) in his seminal decision in *R. v. Big M Drug Mart Ltd.*, [1985] 1 S.C.R. 295, at p. 337:

Freedom in a broad sense embraces both the absence of coercion and constraint, and the right to manifest beliefs and practices. Freedom means that, subject to such limitations as are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others, no one is to be forced to act in a way contrary to his beliefs or his conscience.

B. (R.), *supra*, at para. 226 [emphasis by Iacobucci and Major JJ.]⁵³

See also: *Trinity Western*, *supra*, at para. 30

74. In the final analysis, the Constitution cannot extend its protection to acts of religious observance – no matter how validly held – that occasion material, physical, or psychological harms (or serious risks of such harm) to others, particularly where those others are vulnerable individuals. There is no basis in the jurisprudence to suggest it would be appropriate to give constitutional protection to harmful conduct that is endemic to a religious practice.

⁵³ Four of nine Justices concurred in the reasons of Iacobucci and Major JJ. The remaining members of the Court did not disagree with this statement of principle, but held that the circumstances presenting in the case called for analysis under s. 1 rather than s. 2(a). See the reasons of La Forest J., *ibid.* at paras. 108, 110. See also para. 107, where Justice La Forest held (citing L’Heureux-Dubé J. in *P. (D.)*, *supra*):

[F]reedom of religion is not absolute. While it is difficult to conceive of any limitations on religious beliefs, the same cannot be said of religious practices, notably when they impact on the fundamental rights and freedoms of others.

(ii) **Section 2(b)**

75. The guarantee of freedom of expression under the *Charter* has the widest of ambits. It protects virtually all activities that convey or attempt to convey meaning. There is, however, one important recognized exception: where meaning is communicated through violence, it is not constitutionally protected. It is critical to understand the nature of and basis for this exception.

Irwin Toy Ltd. v. Quebec (A.G.), [1989] 1 S.C.R. 927 at 970 (Dickson C.J.C., Lamer and Wilson JJ.)

76. Expression has both a content and form, which may be separated analytically. The starting point for *Charter* analysis is that all content is *prima facie* protected, with infringements to be justified under s. 1. On the other hand, where that content is conveyed in a physically violent *form*, it will fall outside s. 2(b) and will not be entitled to protection.

Irwin Toy, ibid. at 968

See also: *Reference re: ss. 193 and 195.1(1)(c) of the Criminal Code (Man.)*, [1990] 1 S.C.R. 1123 (“*Prostitution Reference*”) at 1182 (Lamer J. (later C.J.C.))

R. v. Keegstra, [1990] 3 S.C.R. 697 at 731-32 (Dickson C.J.C.), 827-32 (McLachlin J. (now C.J.C.));

R. v. Zundel, [1992] 2 S.C.R. 731 at 753-54 (McLachlin J.), 801 (Cory and Iacobucci JJ.)

R. v. Sharpe, 2001 SCC 2 at para. 147, [2001] 1 S.C.R. 45 (L’Heureux-Dubé, Gonthier and Bastarache JJ.)

77. To the extent that s. 2(b) is invoked in these proceedings – *e.g.* by the FLDS and the CPAA – it seeks to protect the form of expressive conduct, not its content. However, on the evidence discussed above, the form of expression at issue is one that causes physical harm to children and directly infringes their rights to security of the person. It cannot receive constitutional protection, and the state ought not to have to justify any interference with such a form of expression.

(iii) **Section 2(d)**

78. These Interested Persons adopt the submissions of the Attorneys General concerning the inapplicability of the guarantee of the freedom of association found in s. 2(d) to familial relationships.

79. In any event, for the reasons expressed elsewhere in this section with respect to the other invoked *Charter* rights, s. 2(d) cannot create a constitutional right for persons to associate for purposes that infringe the fundamental rights of children.

(iv) **Conclusion**

80. It would be absurd to interpret our Constitution as having entrenched protection for conduct that causes material, physical, or psychological harm to others. These Interested Persons submit that there is no case authority in which the Court has mandated a s. 1 analysis in such a case. While it may therefore be necessary to proceed to s. 1 to justify s. 293 as it applies to other circumstances, it is not necessary to do so with respect to children in a Polygamous community: in those cases, harm is endemic and the children are entitled to have their fundamental rights upheld at the first instance.
81. In the event, however, that the Court finds s. 293 to constitute a *prima facie* infringement of substantive *Charter* rights, it must go on to consider whether the limitation is reasonable and demonstrably justified in a free and democratic society. That analysis calls for a consideration of intersection between the rights claimed by adults engaged in polygamy, and the rights of those children whose rights are affected by it. That is the topic of the next section.

B. No Hierarchy of Constitutional Rights

1. Charter Must Be Interpreted As a Whole

82. No right exists in isolation. This is no less true for the rights and freedoms guaranteed in the *Charter*. As the Court held in *Trinity Western*:

[T]he *Charter* must be read as a whole, so that one right is not privileged at the expense of another. As Lamer C.J. stated for the majority of this Court in *Dagenais v. Canadian Broadcasting Corp.*, [1994] 3 S.C.R. 835, at p. 877:

A hierarchical approach to rights, which places some over others, must be avoided, both when interpreting the *Charter* and when developing the common law. When the protected rights of two individuals come into conflict . . . *Charter* principles require a balance to be achieved that fully respects the importance of both sets of rights.

Trinity Western University v. British Columbia College of Teachers, 2001 SCC 31 at para. 31, [2001] 1 S.C.R. 772 (Iacobucci and Bastarache JJ.)

83. This concept is particularly important in the present case. It is without question that children are rights-holders under the *Charter* and at international law. As L'Heureux-Dubé J. stated in *Baker*: "Children's rights and attention to their interests are central humanitarian and compassionate values in Canadian society."

Baker v. Canada (Minister of Citizenship and Immigration), [1999] 2 S.C.R. 817 at para. 67

See also: *B. (R.) v. Children's Aid Society of Metropolitan Toronto*, [1995] 1 S.C.R. 315 at para. 217 (Iacobucci and Major JJ.)

84. By way of example, one person's freedom of religion may in certain circumstances be tempered by another's freedom of conscience (or "freedom from conformity to religious dogma").

R. v. Edwards Books and Art Ltd., [1986] 2 S.C.R. 713 at 760-62 (Dickson C.J.C.)

85. Because of the developing nature of children's awareness and judgment, there is a particularly acute role for their freedom from conformity to religious dogma in the household and community setting. Iacobucci and Major JJ. expressed this cogently in *B. (R.)*:

The appellants proceed on the assumption that Sheena is of the same religion as they, and hence cannot submit to a blood transfusion. Yet, Sheena has never expressed any agreement with the Jehovah's Witness faith, nor, for the matter, with any religion, assuming any such agreement would be effective. There is thus an impingement upon Sheena's freedom of conscience which arguably includes the right to live long enough to make one's own reasoned choice about the religion one wishes to follow as well as the right not to hold a religious belief.

B. (R.), *supra*, at para. 231

86. Likewise, although (as discussed below) parents clearly have rights with respect to their children's education and religious upbringing, the exercise of those rights cannot extend to a denial of the child's right to receive information, which is guaranteed by s. 2(b).

Little Sisters Book and Art Emporium v. Canada (Minister of Justice), 2000 SCC 69 at para. 41, [2000] 2 S.C.R. 1120 (Binnie J.)

87. Indeed, as noted by Chief Justice Dickson, "[t]he ability of each citizen to make free and informed decisions is the absolute prerequisite for the legitimacy, acceptability, and efficacy of our system of self-government." If children are not provided access to information during their formative years, they cannot readily mature into citizens capable of making such critical decisions and life-choices.

R. v. Big M Drug Mart Ltd., *supra*, at 346

88. In brief, the holistic approach to *Charter* interpretation requires the Court to consider, against all of the putative breaches of the polygamous adult's *Charter* rights posited in this case, those correlative *Charter* rights of children. As discussed below, when this is done, s. 293 can only be a limit that is justified under our Constitution.

2. Presumption of Minimum Protection Applied

(i) **General Interpretative Principles: Primacy of the Child's Best Interests and the Right to Protection**

89. International law establishes a number of general principles in the children's rights context, which the *Charter* presumptively embodies. These principles therefore serve as "*Grundnorms*" in *Charter* analysis and indicate the minimum content of the children's constitutional rights in Canada.
90. As discussed above, Canada is party to the *Convention*. The *Convention* not only recognizes the rights of children (persons under 18) within Canada's borders, but also places positive obligations on Canada to protect those children.

[1992] Can. T.S. No. 3

91. Article 3(1) of the *Convention* provides as follows:

In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.

Convention, art. 3(1)

92. As Abella J. recently summarized, in *A.C.*:

The *Convention on the Rights of the Child*, Can. T.S. 1992 No. 3, which Canada signed on May 28, 1990 and ratified on December 13, 1991, describes “the best interests of the child” as a primary consideration in all actions concerning children (Article 3). It then sets out a framework under which the child’s own input will inform the content of the “best interests” standard, with the weight accorded to these views increasing in relation to the child’s developing maturity.

A.C. v. Manitoba (Director of Child and Family Services), 2009 SCC 30 at para. 93, [2009] 2 S.C.R. 181

93. Doubtless, parents and family play a special role in the rearing of children. The State is bound to respect that special role, *insofar as those persons performing it are acting consistently with the children’s best interests*. In this vein, the *Convention* provides:

States Parties shall respect the responsibilities, rights and duties of parents or, where applicable, the members of the extended family or community as provided for by local custom, legal guardians or other persons legally responsible for the child, to provide, in a manner consistent with the evolving capacities of the child, appropriate direction and guidance in the exercise by the child of the rights recognized in the present Convention.

Convention, art. 5

See also: ICCPR, art. 24(1)⁵⁴

CRC, General Comment No. 4, *supra*, at para. 7⁵⁵

⁵⁴ Every child shall have, without any discrimination as to race, colour, sex, language, religion, national or social origin, property or birth, the right to such measures of protection as are required by his status as a minor, on the part of his family, society and the State. [Emphasis added.]

⁵⁵ [P]arents or other persons legally responsible for the child need to fulfil with care their right and responsibility to provide direction and guidance to their adolescent children in the exercise by the latter of their rights. They have an obligation to take into account the adolescents’ views, in accordance with their age and maturity, and to provide a safe and supportive environment in which the adolescent can develop. Adolescents need to be recognized by the members of their family environment as active rights holders who have the capacity to become full and responsible citizens, given the proper guidance and direction.

94. Consistent with the reasons of Iacobucci and Major JJ. in *B. (R.)*, above, international law recognizes that, while the State must respect parents' responsibilities, rights and duties, those are not sacrosanct. Above all, the State must ensure that the child's best interests are given primary consideration and that the child has an opportunity to develop and mature into an independent adult. In short, it has an obligation to protect against the inculcation of values that would retard that development and run counter to the best interests of the child.

Convention, art. 3

(ii) Education, Health, Marriage, Reproduction and Sexuality

95. All children have the right to education under the *Convention*. This right comprises two important components: a right of access to education; and a right to specific educational content. Article 28 of the *Convention* deals with the former,⁵⁶ article 29 with the latter.

CRC, General Comment No. 6, *supra*, paras 41-42 (education)

96. In this connection, and consistent with Chief Justice Dickson's dictum from *Big M Drug Mart*, above, article 29(1) provides:

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

- (a) The development of the child's personality, talents and mental and physical abilities to their fullest potential;

[...]

- (d) The preparation of the child for responsible life in a free society, in the spirit of understanding, peace, tolerance, equality of sexes, and friendship among all peoples, ethnic, national and religious groups and persons of indigenous origin[.]

Convention, art. 29

See also: CRC/GC/2001/1, 17 April 2001, General Comment No. 1, "The Aims of Education", art. 29(1)

ICESCR, art. 13(1), concerning the right to education, including an education directed to full development of the human personality & the sense of its dignity

CEDAW, art. 10(c), concerning the duty to take all appropriate measures to eliminate stereotyped gender roles through encouragement of co-

⁵⁶ As do other international treaties. See, e.g., the *Convention on the Elimination of All Forms of Discrimination Against Women* ("CEDAW"), art. 10(f), concerning the obligation to eliminate discrimination against women in education and to ensure "the reduction of female student drop-out rates and the organization of programmes for girls ... who have left school prematurely". Canada is a party to CEDAW: [1982] Can. T.S. No. 31.

education, adaption of teaching methods, and revision of textbooks and school programmes

97. A child also has the right to enjoy the highest attainable standard of physical and mental health. Canada bears obligations under the *Convention* and other international instruments to take appropriate measures, *inter alia*, to diminish infant and child mortality, to develop family planning education and services, and to “take all effective and appropriate measures with a view to abolishing traditional practices prejudicial to the health of children”.

Convention, arts. 24(1), (2)(a), 2(f), (3)

See also: *International Covenant on Economic, Social and Cultural Rights* (1966) (“ICESCR”) ([1976] Can. T.S. No. 46), arts. 12(1), (2)(a)

98. Children’s right of access to information is particularly relevant in this context. Article 17 of the *Convention* states:

States Parties ... 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.

Again, this presumptively indicates at least part of the scope of the child’s right to access information under s. 2(b) of the *Charter*.

Convention, art. 17

See also: CRC, General Comment No. 4, *supra*, para. 10⁵⁷

99. Regarding harmful traditional practices, the CRC has identified early marriage as one such thing. It has urged State Parties to address gender roles and stereotypes that contribute to early marriage, and has set out the following standard for State Parties’ action:

Adolescent girls should have access to information on the harm that early marriage and early pregnancy can cause, and those who become pregnant should have access to health services that are sensitive to their rights and particular needs. States parties should take measures to reduce maternal morbidity and mortality in adolescent girls, particularly caused by early pregnancy and unsafe abortion practices, and to support adolescent parents. Young mothers, especially where support is lacking, may be prone to

⁵⁷ The right of adolescents to access appropriate information is crucial if States parties are to promote cost effective measures, including through laws, policies and programmes, with regard to numerous health related situations, ... such as family planning, prevention of accidents, [and] protection from harmful traditional practices, including early marriages”

depression and anxiety, compromising their ability to care for their child. The Committee urges States parties (a) to develop and implement programmes that provide access to sexual and reproductive health services, including family planning, contraception and safe abortion services ... and (c) to develop policies that will allow adolescent mothers to continue their education.

CRC, General Comment No. 4, *supra*, paras. 20, 24 31

100. Indeed, CEDAW provides that the marriage of a child shall have no legal effect. It also obligates States Party like Canada to specify a minimum age for marriage, and to make official registration of marriage compulsory.

CEDAW, art. 16(2)

101. Girls also have the women's right to decide freely on the number and spacing of their children and to have access to "the information, education and means to enable them to exercise these rights". Again, this right must also entail access to sex education as well as contraceptive education and services – it therefore provides additional content to children's s. 2(b) rights.

Convention on the Elimination of All Forms of Discrimination against Women (1979) ("CEDAW") ([1982] Can. T.S. No. 31), art 16(1)(e)

See also: CRC/GC/2003/3, 17 March 2003 General Comment No. 3 (2003), "HIV/AIDS and the rights of the children", para. 16⁵⁸

102. These rights clearly relate and provide content to (female) children's rights to security of the person.

C. Section 293 Serves to Protect Children's Rights

103. Canada's obligation to respect the rights discussed in the above section engages a positive duty to act (or to protect). Our discussion of the evidence has indicated the direct link between the practice of polygamy and breaches of children's rights. The prohibition in s. 293 therefore plays an important role in protecting those rights and upholding Canada's international obligations.

⁵⁸ States parties are reminded that children require relevant, appropriate and timely information which recognizes the differences in levels of understanding among them, is tailored appropriately to age level and capacity and enables them to deal positively and responsibly with their sexuality ...

D. Section 293 a Justifiable Limit for Children in Polygamous Communities

104. Following the Chief Justice's reasoning in *Slaight Communications*, the existence of the rights at international law provides a litmus test as to what is considered reasonable in other free and democratic societies (which will, like Canada, have voluntarily acceded to the terms of the instrument through ratification).
105. The CCRC and Asper Centre rest on the above discussion of children's rights, at international law and under the *Charter*, and submit that, if s. 293 does give rise to *Charter* breaches with respect to its application to children in polygamous communities, such limits as it imposes are reasonable and "demonstrably justified in a free and democratic society".

E. The Appropriate Response to the Reference Questions

106. The Court has been asked to answer the following questions:
1. Is section 293 of the *Criminal Code of Canada* consistent with the *Canadian Charter of Rights and Freedoms*? If not, in what particular or particulars and to what extent?
 2. What are the necessary elements of the offence in section 293 of the *Criminal Code of Canada*? Without limiting this question, does section 293 require that the polygamy or conjugal union in question involved a minor, or occurred in a context of dependence, exploitation, abuse of authority, a gross imbalance of power, or undue influence?
107. These Interested Persons submit that this Court enjoys the same residual discretion as the Supreme Court of Canada not to answer reference questions where it would be inappropriate.
See Reference re Same-Sex Marriage, 2004 SCC 79 at para. 10, [2004] 3 S.C.R. 698
108. Indeed, the case for such a discretion is stronger in the case of the B.C. Supreme Court, since it enjoys inherent jurisdiction.⁵⁹
109. In the circumstances of this case, these Interested Persons submit that the Court ought not to answer the second question, which calls for speculation and which runs counter to constitutional and common law traditions. In order to avoid harm to children – and art. 3 of

⁵⁹ Like the *Supreme Court Act*, R.S.C. 1985, c. S-26, s. 53(1), which provides for the S.C.C.'s reference jurisdiction, s. 1 of the *Constitutional Question Act*, R.S.B.C. 1996, c. 68 refers to hearing and consideration of the questions posed; neither statute mandates that responses be provided where the questions – or the responses they would call for – are inappropriate.

the *Convention* requires that “the best interests of the child shall be a primary consideration” in all actions concerning children undertaken by courts of law – the CCRC and Asper Centre respectfully submit that the Court should follow a more traditional route that hews closely to the text of s. 52 of the *Constitution Act, 1982*. That is, it should declare *inconsistencies*, not engage itself in drafting a provision that would be consistent.

1. **“Declaration of Inconsistency”**

110. The Court’s role in this proceeding is an advisory one. In these circumstances, these Interested Persons submit that the appropriate manner for the Court to answer the Reference questions, if it finds s. 293 inconsistent with the *Charter* in some respect, is to make a declaration respecting the extent of the inconsistency rather than to strike the provision down. This would ensure the continued application of s. 293 in its constitutional aspects and would avoid both: (a) the Court’s having to engage in “judicial legislation” and (b) the risk that Parliamentary inactivity after a suspended declaration of invalidity may result in no prohibition at all.

111. Section 52(1) of the *Constitution Act, 1982*, which famously declares the primacy of the Constitution, provides only that laws inconsistent with the Constitution are of no force or effect “*to the extent of the inconsistency*”. It pointedly does not say that any law that is *partially inconsistent* is to be stricken; indeed, it quite appropriately preserves the presumption of constitutionality where no inconsistency is shown.

Constitution Act, 1982, s. 52(1)

112. The remedy proposed by these Interested Persons is similar in nature to a “reading down”, but can be thought of as its mirror opposite: a “reading out”. Any inconsistency with the *Charter* is addressed by a declaration, which operates similar to a constitutional exemption. This more modest approach avoids the pitfalls of the Court’s having to define the situations in which the provision *is* constitutionally applicable.

Compare *Canadian Foundation for Children, Youth and the Law v. Canada (A.G.)*, 2004 SCC 4 at para. 123, [2004] 1 S.C.R. 76 and *Arkininstall v. Surrey (City)*, 2010 BCCA 250 at para. 94, 319 D.L.R. (4th) 512

113. If this Court were to find, for instance, that the prohibition on polygamy is unconstitutional as it is applied in circumstances where no inherent harm is caused to children or vulnerable groups, the declaration of inconsistency in those circumstances would serve the following critically important purposes:
- i. it would be responsive to the evidence led on the Reference and would respect the traditional onus of proof;
 - ii. it would respect the primacy of the Constitution;
 - iii. it would provide responsive and legally certain answers to the questions posed in these proceedings; and, in so doing
 - iv. it would uphold article 3 of the *Convention* and the obligation to give paramountcy to the best interests of the child.

Constitution Act, 1982, s. 52(1)

114. Regarding the best interests of the child, there are material risks associated with answering question 2 and with other constitutional remedies, such as a suspended declaration of invalidity. For instance, there will inevitably be unforeseen or unforeseeable scenarios that will be omitted in any attempt to delineate the bounds of a notional prohibition on polygamy that would be consistent with the Constitution. The exclusion of such matters would be a detriment to child protection. The same holds if s. 293 is struck and remitted to Parliament on a suspended declaration of invalidity.

115. In sum, these Interested Persons ask the Court not to “throw out the baby with the bathwater”. Section 293 is presumed constitutional. The onus is on those challenging it to show that it is inconsistent with the Constitution; and then, it only ceases to have force or effect to the extent of that inconsistency. To attempt to answer question 2 would in effect be to take up the drafter’s pen. This Court ought not to be placed in that position, and it is unnecessary for it to do so in this case. Rather, it is more appropriate for the Court merely to declare the extent of any inconsistency shown, and leave s. 293 to operate in all other situations.

116. In this connection, one must hope and expect that the certainty from such an answer will enable law enforcement officials to proceed with charges under s. 293 where children or

vulnerable persons are concerned. This would address what the evidence on this Reference shows to have been a serious problem thus far: the failure to enforce.

2. Non-Application to Minors

117. Although these Interested Persons submit that s. 293 survives constitutional scrutiny as it applies to children in a Polygamous community, they do nonetheless say that there is one aspect of s. 293 that is inconsistent with the Constitution and must be declared so.
118. That is, the criminal prohibition in s. 293 cannot apply to a child who practises, enters into, celebrates, *etc.* a form of polygamy or conjugal union with multiple persons.
119. In the first place, as a criminal prohibition, s. 293 clearly engages the liberty rights of children.

Prostitution Reference, supra

120. Young persons are entitled to a presumption of diminished moral blameworthiness. That presumption is a principle of fundamental justice. In so holding, Justice Abella stated:

The preceding confirms, in my view, that a broad consensus reflecting society's values and interests exists, namely that the principle presumption of diminished moral culpability in young persons is fundamental to our notions of how a fair legal system ought to operate.

R. v. D.B., 2008 SCC 25, [2008] 2 S.C.R. 3 para. 68

121. The holding in *D.B.* is supported by the *Convention*, which recognizes:
- the right of every child alleged as, accused of, or recognized as having infringed the penal law to be treated in a manner consistent with the promotion of the child's sense of dignity and worth, which reinforces the child's respect for the human rights and fundamental freedoms of others and which takes into account the child's age and the desirability of promoting the child's reintegration and the child's assuming a constructive role in society.

Convention, art. 40(1)


122. As demonstrated by the evidence in these proceedings, a form of polygamy of conjugal union with multiple persons – when it involves a child as one of the parties to it – is exploitative and harmful to the child. If one were to subject a child to criminal sanctions under s. 293,

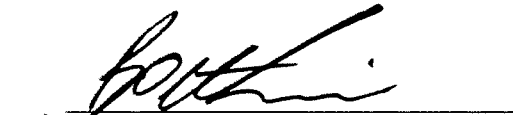
this would offend the principle of fundamental justice identified in *D.B.*: the reduced moral blameworthiness.

123. These children, after all, they are victims, not criminals. Section 293 cannot constitutionally apply to impose criminal liability on children.
124. These Interested Persons therefore request that this Honourable Court, as part of its “declaration of inconsistency”, provide a clear signal to law enforcement officers that children cannot be prosecuted under s. 293.

ALL OF WHICH IS RESPECTFULLY SUBMITTED THIS 4th DAY OF MARCH, 2011.

Hunter Litigation Chambers
Solicitors for these Interested Persons


per Brent Olthuis


per Cheryl Milne


per Stephanie McHugh

THIS WRITTEN ARGUMENT is prepared and delivered by Hunter Litigation Chambers, whose place of business and address for service is 2100 – 1040 West Georgia Street, Vancouver, British Columbia, V6E 4H1. Telephone: (604) 891-2400, Facsimile: (604) 647-4554.

APPENDIX

Criminal Code, R.S.C. 1985, c. C-46, s. 293

Polygamy

293. (1) Every one who

(a) practises or enters into or in any manner agrees or consents to practise or enter into

(i) any form of polygamy, or

(ii) any kind of conjugal union with more than one person at the same time,

whether or not it is by law recognized as a binding form of marriage, or

(b) celebrates, assists or is a party to a rite, ceremony, contract or consent that purports to sanction a relationship mentioned in subparagraph (a)(i) or (ii),

is guilty of an indictable offence and liable to imprisonment for a term not exceeding five years.

Evidence in case of polygamy

(2) Where an accused is charged with an offence under this section, no averment or proof of the method by which the alleged relationship was entered into, agreed to or consented to is necessary in the indictment or on the trial of the accused, nor is it necessary on the trial to prove that the persons who are alleged to have entered into the relationship had or intended to have sexual intercourse.

Polygamie

293. (1) Est coupable d'un acte criminel et passible d'un emprisonnement maximal de cinq ans quiconque, selon le cas :

a) pratique ou contracte, ou d'une façon quelconque accepte ou convient de pratiquer ou de contracter :

(i) soit la polygamie sous une forme quelconque,

(ii) soit une sorte d'union conjugale avec plus d'une personne à la fois,

qu'elle soit ou non reconnue par la loi comme une formalité de mariage qui lie;

b) célèbre un rite, une cérémonie, un contrat ou un consentement tendant à sanctionner un lien mentionné aux sous-alinéas a)(i) ou (ii), ou y aide ou participe.

Preuve en cas de polygamie

(2) Lorsqu'un prévenu est inculpé d'une infraction visée au présent article, il n'est pas nécessaire d'affirmer ou de prouver, dans l'acte d'accusation ou lors du procès du prévenu, le mode par lequel le lien présumé a été contracté, accepté ou convenu. Il n'est pas nécessaire non plus, au procès, de prouver que les personnes qui auraient contracté le lien ont eu, ou avaient l'intention d'avoir, des rapports sexuels.

Convention on the Rights of the Child

Preamble

The States Parties to the present Convention, Considering that, in accordance with the principles proclaimed in the Charter of the United Nations, recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world,

Bearing in mind that the peoples of the United Nations have, in the Charter, reaffirmed their faith in fundamental human rights and in the dignity and worth of the human person, and have determined to promote social progress and better standards of life in larger freedom,

Recognizing that the United Nations has, in the Universal Declaration of Human Rights and in the International Covenants on Human Rights, proclaimed and agreed that everyone is entitled to all the rights and freedoms set forth therein, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status,

Recalling that, in the Universal Declaration of Human Rights, the United Nations has proclaimed that childhood is entitled to special care and assistance,

Convinced that the family, as the fundamental group of society and the natural environment for the growth and well-being of all its members and particularly children, should be afforded the necessary protection and assistance so that it can fully assume its responsibilities within the community,

Préambule

Les Etats parties à la présente Convention, Considérant que, conformément aux principes proclamés dans la Charte des Nations Unies, la reconnaissance de la dignité inhérente à tous les membres de la famille humaine ainsi que l'égalité et le caractère inaliénable de leurs droits sont le fondement de la liberté, de la justice et de la paix dans le monde,

Ayant à l'esprit le fait que les peuples des Nations Unies ont, dans la Charte, proclamé à nouveau leur foi dans les droits fondamentaux de l'homme et dans la dignité et la valeur de la personne humaine, et qu'ils ont résolu de favoriser le progrès social et d'instaurer de meilleures conditions de vie dans une liberté plus grande,

Reconnaissant que les Nations Unies, dans la Déclaration universelle des droits de l'homme et dans les pactes internationaux relatifs aux droits de l'homme, ont proclamé et sont convenues que chacun peut se prévaloir de tous les droits et de toutes les libertés qui y sont énoncés, sans distinction aucune, notamment de race, de couleur, de sexe, de langue, de religion, d'opinion politique ou de toute autre opinion, d'origine nationale ou sociale, de fortune, de naissance ou de toute autre situation,

Rappelant que, dans la Déclaration universelle des droits de l'homme, les Nations Unies ont proclamé que l'enfance a droit à une aide et à une assistance spéciales,

Convaincus que la famille, unité fondamentale de la société et milieu naturel pour la croissance et le bien-être de tous ses membres et en particulier des enfants, doit recevoir la protection et l'assistance dont elle a besoin pour pouvoir jouer pleinement son rôle dans la communauté,

Recognizing that the child, for the full and harmonious development of his or her personality, should grow up in a family environment, in an atmosphere of happiness, love and understanding,

Considering that the child should be fully prepared to live an individual life in society, and brought up in the spirit of the ideals proclaimed in the Charter of the United Nations, and in particular in the spirit of peace, dignity, tolerance, freedom, equality and solidarity,

Bearing in mind that the need to extend particular care to the child has been stated in the Geneva Declaration of the Rights of the Child of 1924 and in the Declaration of the Rights of the Child adopted by the General Assembly on 20 November 1959 and recognized in the Universal Declaration of Human Rights, in the International Covenant on Civil and Political Rights (in particular in articles 23 and 24), in the International Covenant on Economic, Social and Cultural Rights (in particular in article 10) and in the statutes and relevant instruments of specialized agencies and international organizations concerned with the welfare of children,

Bearing in mind that, as indicated in the Declaration of the Rights of the Child, "the child, by reason of his physical and mental immaturity, needs special safeguards and care, including appropriate legal protection, before as well as after birth",

Recalling the provisions of the Declaration on Social and Legal Principles relating to the Protection and Welfare of Children, with Special Reference to Foster Placement and Adoption Nationally and Internationally; the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (The

Reconnaissant que l'enfant, pour l'épanouissement harmonieux de sa personnalité, doit grandir dans le milieu familial, dans un climat de bonheur, d'amour et de compréhension,

Considérant qu'il importe de préparer pleinement l'enfant à avoir une vie individuelle dans la société, et de l'élever dans l'esprit des idéaux proclamés dans la Charte des Nations Unies, et en particulier dans un esprit de paix, de dignité, de tolérance, de liberté, d'égalité et de solidarité,

Ayant à l'esprit que la nécessité d'accorder une protection spéciale à l'enfant a été énoncée dans la Déclaration de Genève de 1924 sur les droits de l'enfant et dans la Déclaration des droits de l'enfant adoptée par l'Assemblée générale le 20 novembre 1959, et qu'elle a été reconnue dans la Déclaration universelle des droits de l'homme, dans le Pacte international relatif aux droits civils et politiques (en particulier aux articles 23 et 24), dans le Pacte international relatif aux droits économiques, sociaux et culturels (en particulier à l'article 10) et dans les statuts et instruments pertinents des institutions spécialisées et des organisations internationales qui se préoccupent du bien-être de l'enfant,

Ayant à l'esprit que, comme indiqué dans la Déclaration des droits de l'enfant, «l'enfant, en raison de son manque de maturité physique et intellectuelle, a besoin d'une protection spéciale et de soins spéciaux, notamment d'une protection juridique appropriée, avant comme après la naissance»,

Rappelant les dispositions de la Déclaration sur les principes sociaux et juridiques applicables à la protection et au bien-être des enfants, envisagés surtout sous l'angle des pratiques en matière d'adoption et de placement familial sur les plans national et international, de l'Ensemble de règles minima des Nations

Beijing Rules); and the Declaration on the Protection of Women and Children in Emergency and Armed Conflict,

Recognizing that, in all countries in the world, there are children living in exceptionally difficult conditions, and that such children need special consideration,

Taking due account of the importance of the traditions and cultural values of each people for the protection and harmonious development of the child,

Recognizing the importance of international co-operation for improving the living conditions of children in every country, in particular in the developing countries,

Have agreed as follows:

PART I

Article 1

For the purposes of the present Convention, a child means every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier.

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, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status.

2. States Parties shall take all appropriate

Unies concernant l'administration de la justice pour mineurs (Règles de Beijing) et de la Déclaration sur la protection des femmes et des enfants en période d'urgence et de conflit armé,

Reconnaissant qu'il y a dans tous les pays du monde des enfants qui vivent dans des conditions particulièrement difficiles, et qu'il est nécessaire d'accorder à ces enfants une attention particulière,

Tenant dûment compte de l'importance des traditions et valeurs culturelles de chaque peuple dans la protection et le développement harmonieux de l'enfant,

Reconnaissant l'importance de la coopération internationale pour l'amélioration des conditions de vie des enfants dans tous les pays, en particulier dans les pays en développement,

Sont convenus de ce qui suit :

Première partie

Article premier

Au sens de la présente Convention, un enfant s'entend de tout être humain âgé de moins de dix-huit ans, sauf si la majorité est atteinte plus tôt en vertu de la législation qui lui est applicable.

Article 2

1. Les Etats parties s'engagent à respecter les droits qui sont énoncés dans la présente Convention et à les garantir à tout enfant relevant de leur juridiction, sans distinction aucune, indépendamment de toute considération de race, de couleur, de sexe, de langue, de religion, d'opinion politique ou autre de l'enfant ou de ses parents ou représentants légaux, de leur origine nationale, ethnique ou sociale, de leur situation de fortune, de leur incapacité, de leur naissance ou de toute autre situation.

2. Les Etats parties prennent toutes les mesures

measures to ensure that the child is protected against all forms of discrimination or punishment on the basis of the status, activities, expressed opinions, or beliefs of the child's parents, legal guardians, or family members.

Article 3

1. In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.

2. States Parties undertake to ensure the child such protection and care as is necessary for his or her well-being, taking into account the rights and duties of his or her parents, legal guardians, or other individuals legally responsible for him or her, and, to this end, shall take all appropriate legislative and administrative measures.

3. States Parties shall ensure that the institutions, services and facilities responsible for the care or protection of children shall conform with the standards established by competent authorities, particularly in the areas of safety, health, in the number and suitability of their staff, as well as competent supervision.

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.

Article 5

States Parties shall respect the responsibilities,

appropriées pour que l'enfant soit effectivement protégé contre toutes formes de discrimination ou de sanction motivées par la situation juridique, les activités, les opinions déclarées ou les convictions de ses parents, de ses représentants légaux ou des membres de sa famille.

Article 3

1. Dans toutes les décisions qui concernent les enfants, qu'elles soient le fait des institutions publiques ou privées de protection sociale, des tribunaux, des autorités administratives ou des organes législatifs, l'intérêt supérieur de l'enfant doit être une considération primordiale.

2. Les Etats parties s'engagent à assurer à l'enfant la protection et les soins nécessaires à son bien-être, compte tenu des droits et des devoirs de ses parents, de ses tuteurs ou des autres personnes légalement responsables de lui, et ils prennent à cette fin toutes les mesures législatives et administratives appropriées.

3. Les Etats parties veillent à ce que le fonctionnement des institutions, services et établissements qui ont la charge des enfants et assurent leur protection soit conforme aux normes fixées par les autorités compétentes, particulièrement dans le domaine de la sécurité et de la santé et en ce qui concerne le nombre et la compétence de leur personnel ainsi que l'existence d'un contrôle approprié.

Article 4

Les Etats parties s'engagent à prendre toutes les mesures législatives, administratives et autres qui sont nécessaires pour mettre en oeuvre les droits reconnus dans la présente Convention. Dans le cas des droits économiques, sociaux et culturels, ils prennent ces mesures dans toutes les limites des ressources dont ils disposent et, s'il y a lieu, dans le cadre de la coopération internationale.

Article 5

Les Etats parties respectent la responsabilité, le

rights and duties of parents or, where applicable, the members of the extended family or community as provided for by local custom, legal guardians or other persons legally responsible for the child, to provide, in a manner consistent with the evolving capacities of the child, appropriate direction and guidance in the exercise by the child of the rights recognized in the present Convention.

Article 6

1. States Parties recognize that every child has the inherent right to life.
2. States Parties shall ensure to the maximum extent possible the survival and development of the child.

Article 7

1. The child shall be registered immediately after birth and shall have the right from birth to a name, the right to acquire a nationality and, as far as possible, the right to know and be cared for by his or her parents.
2. States Parties shall ensure the implementation of these rights in accordance with their national law and their obligations under the relevant international instruments in this field, in particular where the child would otherwise be stateless.

Article 8

1. States Parties undertake to respect the right of the child to preserve his or her identity, including nationality, name and family relations as recognized by law without unlawful interference.
2. Where a child is illegally deprived of some or all of the elements of his or her identity, States Parties shall provide appropriate assistance and protection, with a view to re-establishing speedily his or her identity.

Article 9

1. States Parties shall ensure that a child shall

droit et le devoir qu'ont les parents ou, le cas échéant, les membres de la famille élargie ou de la communauté, comme prévu par la coutume locale, les tuteurs ou autres personnes légalement responsables de l'enfant, de donner à celui-ci, d'une manière qui corresponde au développement de ses capacités, l'orientation et les conseils appropriés à l'exercice des droits que lui reconnaît la présente Convention.

Article 6

1. Les Etats parties reconnaissent que tout enfant a un droit inhérent à la vie.
2. Les Etats parties assurent dans toute la mesure possible la survie et le développement de l'enfant.

Article 7

1. L'enfant est enregistré aussitôt sa naissance et a dès celle-ci le droit à un nom, le droit d'acquérir une nationalité et, dans la mesure du possible, le droit de connaître ses parents et d'être élevé par eux.
2. Les Etats parties veillent à mettre ces droits en oeuvre conformément à leur législation nationale et aux obligations que leur imposent les instruments internationaux applicables en la matière, en particulier dans les cas où faute de cela l'enfant se trouverait apatride.

Article 8

1. Les Etats parties s'engagent à respecter le droit de l'enfant de préserver son identité, y compris sa nationalité, son nom et ses relations familiales, tels qu'ils sont reconnus par la loi, sans ingérence illégale.
2. Si un enfant est illégalement privé des éléments constitutifs de son identité ou de certains d'entre eux, les Etats parties doivent lui accorder une assistance et une protection appropriées, pour que son identité soit rétablie aussi rapidement que possible.

Article 9

1. Les Etats parties veillent à ce que l'enfant ne

not be separated from his or her parents against their will, except when competent authorities subject to judicial review determine, in accordance with applicable law and procedures, that such separation is necessary for the best interests of the child. Such determination may be necessary in a particular case such as one involving abuse or neglect of the child by the parents, or one where the parents are living separately and a decision must be made as to the child's place of residence.

2. In any proceedings pursuant to paragraph 1 of the present article, all interested parties shall be given an opportunity to participate in the proceedings and make their views known.

3. States Parties shall respect the right of the child who is separated from one or both parents to maintain personal relations and direct contact with both parents on a regular basis, except if it is contrary to the child's best interests.

4. Where such separation results from any action initiated by a State Party, such as the detention, imprisonment, exile, deportation or death (including death arising from any cause while the person is in the custody of the State) of one or both parents or of the child, that State Party shall, upon request, provide the parents, the child or, if appropriate, another member of the family with the essential information concerning the whereabouts of the absent member(s) of the family unless the provision of the information would be detrimental to the well-being of the child. States Parties shall further ensure that the submission of such a request shall of itself entail no adverse consequences for the person(s) concerned.

Article 10

1. In accordance with the obligation of States Parties under article 9, paragraph 1, applications by a child or his or her parents to

soit pas séparé de ses parents contre leur gré, à moins que les autorités compétentes ne décident, sous réserve de révision judiciaire et conformément aux lois et procédures applicables, que cette séparation est nécessaire dans l'intérêt supérieur de l'enfant. Une décision en ce sens peut être nécessaire dans certains cas particuliers, par exemple lorsque les parents maltraitent ou négligent l'enfant, ou lorsqu'ils vivent séparément et qu'une décision doit être prise au sujet du lieu de résidence de l'enfant.

2. Dans tous les cas prévus au paragraphe 1 du présent article, toutes les parties intéressées doivent avoir la possibilité de participer aux délibérations et de faire connaître leurs vues.

3. Les Etats parties respectent le droit de l'enfant séparé de ses deux parents ou de l'un d'eux d'entretenir régulièrement des relations personnelles et des contacts directs avec ses deux parents, sauf si cela est contraire à l'intérêt supérieur de l'enfant.

4. Lorsque la séparation résulte de mesures prises par un Etat partie, telles que la détention, l'emprisonnement, l'exil, l'expulsion ou la mort (y compris la mort, quelle qu'en soit la cause, survenue en cours de détention) des deux parents ou de l'un d'eux, ou de l'enfant, l'Etat partie donne sur demande aux parents, à l'enfant ou, s'il y a lieu, à un autre membre de la famille les renseignements essentiels sur le lieu où se trouvent le membre ou les membres de la famille, à moins que la divulgation de ces renseignements ne soit préjudiciable au bien-être de l'enfant. Les Etats parties veillent en outre à ce que la présentation d'une telle demande n'entraîne pas en elle-même de conséquences fâcheuses pour la personne ou les personnes intéressées.

Article 10

1. Conformément à l'obligation incombant aux Etats parties en vertu du paragraphe 1 de l'article 9, toute demande faite par un enfant ou

enter or leave a State Party for the purpose of family reunification shall be dealt with by States Parties in a positive, humane and expeditious manner. States Parties shall further ensure that the submission of such a request shall entail no adverse consequences for the applicants and for the members of their family.

2. A child whose parents reside in different States shall have the right to maintain on a regular basis, save in exceptional circumstances personal relations and direct contacts with both parents. Towards that end and in accordance with the obligation of States Parties under article 9, paragraph 1, States Parties shall respect the right of the child and his or her parents to leave any country, including their own, and to enter their own country. The right to leave any country shall be subject only to such restrictions as are prescribed by law and which are necessary to protect the national security, public order (ordre public), public health or morals or the rights and freedoms of others and are consistent with the other rights recognized in the present Convention.

Article 11

1. States Parties shall take measures to combat the illicit transfer and non-return of children abroad.

2. To this end, States Parties shall promote the conclusion of bilateral or multilateral agreements or accession to existing agreements.

Article 12

1. States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child.

ses parents en vue d'entrer dans un Etat partie ou de le quitter aux fins de réunification familiale est considérée par les Etats parties dans un esprit positif, avec humanité et diligence. Les Etats parties veillent en outre à ce que la présentation d'une telle demande n'entraîne pas de conséquences fâcheuses pour les auteurs de la demande et les membres de leur famille.

2. Un enfant dont les parents résident dans des Etats différents a le droit d'entretenir, sauf circonstances exceptionnelles, des relations personnelles et des contacts directs réguliers avec ses deux parents. A cette fin, et conformément à l'obligation incombant aux Etats parties en vertu du paragraphe 1 de l'article 9, les Etats parties respectent le droit qu'ont l'enfant et ses parents de quitter tout pays, y compris le leur, et de revenir dans leur propre pays. Le droit de quitter tout pays ne peut faire l'objet que des restrictions prescrites par la loi qui sont nécessaires pour protéger la sécurité nationale, l'ordre public, la santé ou la moralité publiques, ou les droits et libertés d'autrui, et qui sont compatibles avec les autres droits reconnus dans la présente Convention.

Article 11

1. Les Etats parties prennent des mesures pour lutter contre les déplacements et les non-retours illicites d'enfants à l'étranger.

2. A cette fin, les Etats parties favorisent la conclusion d'accords bilatéraux ou multilatéraux ou l'adhésion aux accords existants.

Article 12

1. Les Etats parties garantissent à l'enfant qui est capable de discernement le droit d'exprimer librement son opinion sur toute question l'intéressant, les opinions de l'enfant étant dûment prises en considération eu égard à son âge et à son degré de maturité.

2. For this purpose, the child shall in particular be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly, or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law.

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 of public order (ordre public), or of public health or morals.

Article 14

1. States Parties shall respect the right of the child to freedom of thought, conscience and religion.

2. States Parties shall respect the rights and duties of the parents and, when applicable, legal guardians, to provide direction to the child in the exercise of his or her right in a manner consistent with the evolving capacities of the child.

3. Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health or morals, or the fundamental rights and freedoms of others.

2. A cette fin, on donnera notamment à l'enfant la possibilité d'être entendu dans toute procédure judiciaire ou administrative l'intéressant, soit directement, soit par l'intermédiaire d'un représentant ou d'une organisation appropriée, de façon compatible avec les règles de procédure de la législation nationale.

Article 13

1. L'enfant a droit à la liberté d'expression. Ce droit comprend la liberté de rechercher, de recevoir et de répandre des informations et des idées de toute espèce, sans considération de frontières, sous une forme orale, écrite, imprimée ou artistique, ou par tout autre moyen du choix de l'enfant.

2. L'exercice de ce droit ne peut faire l'objet que des seules restrictions qui sont prescrites par la loi et qui sont nécessaires :

- a) Au respect des droits ou de la réputation d'autrui; ou
- b) A la sauvegarde de la sécurité nationale, de l'ordre public, de la santé ou de la moralité publiques.

Article 14

1. Les Etats parties respectent le droit de l'enfant à la liberté de pensée, de conscience et de religion.

2. Les Etats parties respectent le droit et le devoir des parents ou, le cas échéant, des représentants légaux de l'enfant, de guider celui-ci dans l'exercice du droit susmentionné d'une manière qui corresponde au développement de ses capacités.

3. La liberté de manifester sa religion ou ses convictions ne peut être soumise qu'aux seules restrictions qui sont prescrites par la loi et qui sont nécessaires pour préserver la sûreté publique, l'ordre public, la santé et la moralité publiques, ou les libertés et droits fondamentaux d'autrui.

Article 15

1. States Parties recognize the rights of the child to freedom of association and to freedom of peaceful assembly.

2. No restrictions may be placed on the exercise of these rights other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others.

Article 16

1. No child shall be subjected to arbitrary or unlawful interference with his or her privacy, family, or correspondence, nor to unlawful attacks on his or her honour and reputation.

2. The child has the right to the protection of the law against such interference or attacks.

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 the mass media to disseminate information and material of social and cultural benefit to the child and in accordance with the spirit of article 29;
- (b) Encourage international co-operation in the production, exchange and dissemination of such information and material from a diversity of cultural, national and international sources;
- (c) Encourage the production and dissemination of children's books;
- (d) Encourage the mass media to have

Article 15

1. Les Etats parties reconnaissent les droits de l'enfant à la liberté d'association et à la liberté de réunion pacifique.

2. L'exercice de ces droits ne peut faire l'objet que des seules restrictions qui sont prescrites par la loi et qui sont nécessaires dans une société démocratique, dans l'intérêt de la sécurité nationale, de la sûreté publique ou de l'ordre public, ou pour protéger la santé ou la moralité publiques, ou les droits et libertés d'autrui.

Article 16

1. Nul enfant ne fera l'objet d'immixtions arbitraires ou illégales dans sa vie privée, sa famille, son domicile ou sa correspondance, ni d'atteintes illégales à son honneur et à sa réputation.

2. L'enfant a droit à la protection de la loi contre de telles immixtions ou de telles atteintes.

Article 17

Les Etats parties reconnaissent l'importance de la fonction remplie par les médias et veillent à ce que l'enfant ait accès à une information et à des matériels provenant de sources nationales et internationales diverses, notamment ceux qui visent à promouvoir son bien-être social, spirituel et moral ainsi que sa santé physique et mentale.

A cette fin, les Etats parties :

- a) Encouragent les médias à diffuser une information et des matériels qui présentent une utilité sociale et culturelle pour l'enfant et répondent à l'esprit de l'article 29;
- b) Encouragent la coopération internationale en vue de produire, d'échanger et de diffuser une information et des matériels de ce type provenant de différentes sources culturelles, nationales et internationales;
- c) Encouragent la production et la diffusion de livres pour enfants;

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, bearing in mind the provisions of articles 13 and 18.

Article 18

1. States Parties shall use their best efforts to ensure recognition of the principle that both parents have common responsibilities for the upbringing and development of the child. Parents or, as the case may be, legal guardians, have the primary responsibility for the upbringing and development of the child. The best interests of the child will be their basic concern.

2. For the purpose of guaranteeing and promoting the rights set forth in the present Convention, States Parties shall render appropriate assistance to parents and legal guardians in the performance of their child-rearing responsibilities and shall ensure the development of institutions, facilities and services for the care of children.

3. States Parties shall take all appropriate measures to ensure that children of working parents have the right to benefit from child-care services and facilities for which they are eligible.

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

d) Encouragent les médias à tenir particulièrement compte des besoins linguistiques des enfants autochtones ou appartenant à un groupe minoritaire;
e) Favorisent l'élaboration de principes directeurs appropriés destinés à protéger l'enfant contre l'information et les matériels qui nuisent à son bien-être, compte tenu des dispositions des articles 13 et 18.

Article 18

1. Les Etats parties s'emploient de leur mieux à assurer la reconnaissance du principe selon lequel les deux parents ont une responsabilité commune pour ce qui est d'élever l'enfant et d'assurer son développement. La responsabilité d'élever l'enfant et d'assurer son développement incombe au premier chef aux parents ou, le cas échéant, à ses représentants légaux. Ceux-ci doivent être guidés avant tout par l'intérêt supérieur de l'enfant.

2. Pour garantir et promouvoir les droits énoncés dans la présente Convention, les Etats parties accordent l'aide appropriée aux parents et aux représentants légaux de l'enfant dans l'exercice de la responsabilité qui leur incombe d'élever l'enfant et assurent la mise en place d'institutions, d'établissements et de services chargés de veiller au bien-être des enfants.

3. Les Etats parties prennent toutes les mesures appropriées pour assurer aux enfants dont les parents travaillent le droit de bénéficier des services et établissements de garde d'enfants pour lesquels ils remplissent les conditions requises.

Article 19

1. Les Etats parties prennent toutes les mesures législatives, administratives, sociales et éducatives appropriées pour protéger l'enfant contre toute forme de violence, d'atteinte ou de brutalités physiques ou mentales, d'abandon ou de négligence, de mauvais traitements ou d'exploitation, y compris la violence sexuelle, pendant qu'il est sous la garde de ses parents ou

care of the child.

2. Such protective measures should, as appropriate, include effective procedures for the establishment of social programmes to provide necessary support for the child and for those who have the 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.

Article 20

1. A child temporarily or permanently deprived of his or her family environment, or in whose own best interests cannot be allowed to remain in that environment, shall be entitled to special protection and assistance provided by the State.

2. States Parties shall in accordance with their national laws ensure alternative care for such a child.

3. Such care could include, inter alia, foster placement, kafalah of Islamic law, adoption or if necessary placement in suitable institutions for the care of children. When considering solutions, due regard shall be paid to the desirability of continuity in a child's upbringing and to the child's ethnic, religious, cultural and linguistic background.

Article 21

States Parties that recognize and/or permit the system of adoption shall ensure that the best interests of the child shall be the paramount consideration and they shall:

(a) Ensure that the adoption of a child is authorized only by competent authorities who determine, in accordance with applicable law

de l'un d'eux, de son ou ses représentants légaux ou de toute autre personne à qui il est confié.

2. Ces mesures de protection doivent comprendre, selon qu'il conviendra, des procédures efficaces pour l'établissement de programmes sociaux visant à fournir l'appui nécessaire à l'enfant et à ceux à qui il est confié, ainsi que pour d'autres formes de prévention, et aux fins d'identification, de rapport, de renvoi, d'enquête, de traitement et de suivi pour les cas de mauvais traitements de l'enfant décrits ci-dessus, et comprendre également, selon qu'il conviendra, des procédures d'intervention judiciaire.

Article 20

1. Tout enfant qui est temporairement ou définitivement privé de son milieu familial, ou qui dans son propre intérêt ne peut être laissé dans ce milieu, a droit à une protection et une aide spéciales de l'Etat.

2. Les Etats parties prévoient pour cet enfant une protection de remplacement conforme à leur législation nationale.

3. Cette protection de remplacement peut notamment avoir la forme du placement dans une famille, de la kafalahde droit islamique, de l'adoption ou, en cas de nécessité, du placement dans un établissement pour enfants approprié. Dans le choix entre ces solutions, il est dûment tenu compte de la nécessité d'une certaine continuité dans l'éducation de l'enfant, ainsi que de son origine ethnique, religieuse, culturelle et linguistique.

Article 21

Les Etats parties qui admettent et/ou autorisent l'adoption s'assurent que l'intérêt supérieur de l'enfant est la considération primordiale en la matière, et :

a) Veillent à ce que l'adoption d'un enfant ne soit autorisée que par les autorités compétentes, qui vérifient, conformément à la

and procedures and on the basis of all pertinent and reliable information, that the adoption is permissible in view of the child's status concerning parents, relatives and legal guardians and that, if required, the persons concerned have given their informed consent to the adoption on the basis of such counselling as may be necessary;

(b) Recognize that inter-country adoption may be considered as an alternative means of child's care, if the child cannot be placed in a foster or an adoptive family or cannot in any suitable manner be cared for in the child's country of origin;

(c) Ensure that the child concerned by inter-country adoption enjoys safeguards and standards equivalent to those existing in the case of national adoption;

(d) Take all appropriate measures to ensure that, in inter-country adoption, the placement does not result in improper financial gain for those involved in it;

(e) Promote, where appropriate, the objectives of the present article by concluding bilateral or multilateral arrangements or agreements, and endeavour, within this framework, to ensure that the placement of the child in another country is carried out by competent authorities or organs.

Article 22

1. States Parties shall take appropriate measures to ensure that a child who is seeking refugee status or who is considered a refugee in accordance with applicable international or domestic law and procedures shall, whether unaccompanied or accompanied by his or her parents or by any other person, receive appropriate protection and humanitarian assistance in the enjoyment of applicable rights set forth in the present Convention and in other international human rights or humanitarian instruments to which the said States are Parties.

loi et aux procédures applicables et sur la base de tous les renseignements fiables relatifs au cas considéré, que l'adoption peut avoir lieu eu égard à la situation de l'enfant par rapport à ses père et mère, parents et représentants légaux et que, le cas échéant, les personnes intéressées ont donné leur consentement à l'adoption en connaissance de cause, après s'être entourées des avis nécessaires;

b) Reconnaissent que l'adoption à l'étranger peut être envisagée comme un autre moyen d'assurer les soins nécessaires à l'enfant, si celui-ci ne peut, dans son pays d'origine, être placé dans une famille nourricière ou adoptive ou être convenablement élevé;

c) Veillent, en cas d'adoption à l'étranger, à ce que l'enfant ait le bénéfice de garanties et de normes équivalant à celles existant en cas d'adoption nationale;

d) Prennent toutes les mesures appropriées pour veiller à ce que, en cas d'adoption à l'étranger, le placement de l'enfant ne se traduise pas par un profit matériel indu pour les personnes qui en sont responsables;

e) Poursuivent les objectifs du présent article en concluant des arrangements ou des accords bilatéraux ou multilatéraux, selon les cas, et s'efforcent dans ce cadre de veiller à ce que les placements d'enfants à l'étranger soient effectués par des autorités ou des organes compétents.

Article 22

1. Les Etats parties prennent les mesures appropriées pour qu'un enfant qui cherche à obtenir le statut de réfugié ou qui est considéré comme réfugié en vertu des règles et procédures du droit international ou national applicable, qu'il soit seul ou accompagné de ses père et mère ou de toute autre personne, bénéficie de la protection et de l'assistance humanitaire voulues pour lui permettre de jouir des droits que lui reconnaissent la présente Convention et les autres instruments internationaux relatifs aux droits de l'homme ou de caractère humanitaire auxquels lesdits Etats sont parties.

2. For this purpose, States Parties shall provide, as they consider appropriate, co-operation in any efforts by the United Nations and other competent intergovernmental organizations or non-governmental organizations co-operating with the United Nations to protect and assist such a child and to trace the parents or other members of the family of any refugee child in order to obtain information necessary for reunification with his or her family. In cases where no parents or other members of the family can be found, the child shall be accorded the same protection as any other child permanently or temporarily deprived of his or her family environment for any reason, as set forth in the present Convention.

Article 23

1. States Parties recognize that a mentally or physically disabled child should enjoy a full and decent life, in conditions which ensure dignity, promote self-reliance and facilitate the child's active participation in the community.

2. States Parties recognize the right of the disabled child to special care and shall encourage and ensure the extension, subject to available resources, to the eligible child and those responsible for his or her care, of assistance for which application is made and which is appropriate to the child's condition and to the circumstances of the parents or others caring for the child.

3. Recognizing the special needs of a disabled child, assistance extended in accordance with paragraph 2 of the present article shall be provided free of charge, whenever possible, taking into account the financial resources of the parents or others caring for the child, and shall be designed to ensure that the disabled child has effective access to and receives

2. A cette fin, les Etats parties collaborent, selon qu'ils le jugent nécessaire, à tous les efforts faits par l'Organisation des Nations Unies et les autres organisations intergouvernementales ou non gouvernementales compétentes collaborant avec l'Organisation des Nations Unies pour protéger et aider les enfants qui se trouvent en pareille situation et pour rechercher les père et mère ou autres membres de la famille de tout enfant réfugié en vue d'obtenir les renseignements nécessaires pour le réunir à sa famille. Lorsque ni le père, ni la mère, ni aucun autre membre de la famille ne peut être retrouvé, l'enfant se voit accorder, selon les principes énoncés dans la présente Convention, la même protection que tout autre enfant définitivement ou temporairement privé de son milieu familial pour quelque raison que ce soit.

Article 23

1. Les Etats parties reconnaissent que les enfants mentalement ou physiquement handicapés doivent mener une vie pleine et décente, dans des conditions qui garantissent leur dignité, favorisent leur autonomie et facilitent leur participation active à la vie de la collectivité.

2. Les Etats parties reconnaissent le droit à des enfants handicapés de bénéficier de soins spéciaux et encouragent et assurent, dans la mesure des ressources disponibles, l'octroi, sur demande, aux enfants handicapés remplissant les conditions requises et à ceux qui en ont la charge, d'une aide adaptée à l'état de l'enfant et à la situation de ses parents ou de ceux à qui il est confié.

3. Eu égard aux besoins particuliers des enfants handicapés, l'aide fournie conformément au paragraphe 2 du présent article est gratuite chaque fois qu'il est possible, compte tenu des ressources financières de leurs parents ou de ceux à qui l'enfant est confié, et elle est conçue de telle sorte que les enfants handicapés aient effectivement accès à l'éducation, à la

education, training, health care services, rehabilitation services, preparation for employment and recreation opportunities in a manner conducive to the child's achieving the fullest possible social integration and individual development, including his or her cultural and spiritual development

4. States Parties shall promote, in the spirit of international cooperation, the exchange of appropriate information in the field of preventive health care and of medical, psychological and functional treatment of disabled children, including dissemination of and access to information concerning methods of rehabilitation, education and vocational services, with the aim of enabling States Parties to improve their capabilities and skills and to widen their experience in these areas. In this regard, particular account shall be taken of the needs of developing countries.

Article 24

1. States Parties recognize the right of the child to the enjoyment of the highest attainable standard of health and to facilities for the treatment of illness and rehabilitation of health. States Parties shall strive to ensure that no child is deprived of his or her right of access to such health care services.

2. States Parties shall pursue full implementation of this right and, in particular, shall take appropriate measures:

- (a) To diminish infant and child mortality;
- (b) To ensure the provision of necessary medical assistance and health care to all children with emphasis on the development of primary health care;
- (c) To combat disease and malnutrition, including within the framework of primary health care, through, inter alia, the application of readily available technology and through the provision of adequate nutritious foods and clean drinking-water, taking into consideration

formation, aux soins de santé, à la rééducation, à la préparation à l'emploi et aux activités récréatives, et bénéficient de ces services de façon propre à assurer une intégration sociale aussi complète que possible et leur épanouissement personnel, y compris dans le domaine culturel et spirituel.

4. Dans un esprit de coopération internationale, les Etats parties favorisent l'échange d'informations pertinentes dans le domaine des soins de santé préventifs et du traitement médical, psychologique et fonctionnel des enfants handicapés, y compris par la diffusion d'informations concernant les méthodes de rééducation et les services de formation professionnelle, ainsi que l'accès à ces données, en vue de permettre aux Etats parties d'améliorer leurs capacités et leurs compétences et d'élargir leur expérience dans ces domaines. A cet égard, il est tenu particulièrement compte des besoins des pays en développement.

Article 24

1. Les Etats parties reconnaissent le droit de l'enfant de jouir du meilleur état de santé possible et de bénéficier de services médicaux et de rééducation. Ils s'efforcent de garantir qu'aucun enfant ne soit privé du droit d'avoir accès à ces services.

2. Les Etats parties s'efforcent d'assurer la réalisation intégrale du droit susmentionné et, en particulier, prennent les mesures appropriées pour :

- a) Réduire la mortalité parmi les nourrissons et les enfants;
- b) Assurer à tous les enfants l'assistance médicale et les soins de santé nécessaires, l'accent étant mis sur le développement des soins de santé primaires;
- c) Lutter contre la maladie et la malnutrition, y compris dans le cadre de soins de santé primaires, grâce notamment à l'utilisation de techniques aisément disponibles et à la

the dangers and risks of environmental pollution;

- (d) To ensure appropriate pre-natal and post-natal health care for mothers;
- (e) To ensure that all segments of society, in particular parents and children, are informed, have access to education and are supported in the use of basic knowledge of child health and nutrition, the advantages of breastfeeding, hygiene and environmental sanitation and the prevention of accidents;
- (f) To develop preventive health care, guidance for parents and family planning education and services.

3. States Parties shall take all effective and appropriate measures with a view to abolishing traditional practices prejudicial to the health of children.

4. States Parties undertake to promote and encourage international co-operation with a view to achieving progressively the full realization of the right recognized in the present article. In this regard, particular account shall be taken of the needs of developing countries.

Article 25

States Parties recognize the right of a child who has been placed by the competent authorities for the purposes of care, protection or treatment of his or her physical or mental health, to a periodic review of the treatment provided to the child and all other circumstances relevant to his or her placement.

Article 26

1. States Parties shall recognize for every child the right to benefit from social security, including social insurance, and shall take the necessary measures to achieve the full realization of this right in accordance with their national law.

fourniture d'aliments nutritifs et d'eau potable, compte tenu des dangers et des risques de pollution du milieu naturel;

- d) Assurer aux mères des soins prénatals et postnatals appropriés;
- e) Faire en sorte que tous les groupes de la société, en particulier les parents et les enfants, reçoivent une information sur la santé et la nutrition de l'enfant, les avantages de l'allaitement au sein, l'hygiène et la salubrité de l'environnement et la prévention des accidents, et bénéficient d'une aide leur permettant de mettre à profit cette information;
- f) Développer les soins de santé préventifs, les conseils aux parents et l'éducation et les services en matière de planification familiale.

3. Les Etats parties prennent toutes les mesures efficaces appropriées en vue d'abolir les pratiques traditionnelles préjudiciables à la santé des enfants.

4. Les Etats parties s'engagent à favoriser et à encourager la coopération internationale en vue d'assurer progressivement la pleine réalisation du droit reconnu dans le présent article. A cet égard, il est tenu particulièrement compte des besoins des pays en développement.

Article 25

Les Etats parties reconnaissent à l'enfant qui a été placé par les autorités compétentes pour recevoir des soins, une protection ou un traitement physique ou mental, le droit à un examen périodique dudit traitement et de toute autre circonstance relative à son placement.

Article 26

1. Les Etats parties reconnaissent à tout enfant le droit de bénéficier de la sécurité sociale, y compris les assurances sociales, et prennent les mesures nécessaires pour assurer la pleine réalisation de ce droit en conformité avec leur législation nationale.

2. The benefits should, where appropriate, be granted, taking into account the resources and the circumstances of the child and persons having responsibility for the maintenance of the child, as well as any other consideration relevant to an application for benefits made by or on behalf 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 capacities, 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 programmes, particularly with regard to nutrition, clothing and housing.

4. States Parties shall take all appropriate measures to secure the recovery of maintenance for the child from the parents or other persons having financial responsibility for the child, both within the State Party and from abroad. In particular, where the person having financial responsibility for the child lives in a State different from that of the child, States Parties shall promote the accession to international agreements or the conclusion of such agreements, as well as the making of other appropriate arrangements.

Article 28

1. States Parties recognize the right of the child

2. Les prestations doivent, lorsqu'il y a lieu, être accordées compte tenu des ressources et de la situation de l'enfant et des personnes responsables de son entretien, ainsi que de toute autre considération applicable à la demande de prestation faite par l'enfant ou en son nom.

Article 27

1. Les Etats parties reconnaissent le droit de tout enfant à un niveau de vie suffisant pour permettre son développement physique, mental, spirituel, moral et social.

2. C'est aux parents ou autres personnes ayant la charge de l'enfant qu'incombe au premier chef la responsabilité d'assurer, dans les limites de leurs possibilités et de leurs moyens financiers, les conditions de vie nécessaires au développement de l'enfant.

3. Les Etats parties adoptent les mesures appropriées, compte tenu des conditions nationales et dans la mesure de leurs moyens, pour aider les parents et autres personnes ayant la charge de l'enfant à mettre en oeuvre ce droit et offrent, en cas de besoin, une assistance matérielle et des programmes d'appui, notamment en ce qui concerne l'alimentation, le vêtement et le logement.

4. Les Etats parties prennent toutes les mesures appropriées en vue d'assurer le recouvrement de la pension alimentaire de l'enfant auprès de ses parents ou des autres personnes ayant une responsabilité financière à son égard, que ce soit sur leur territoire ou à l'étranger. En particulier, pour tenir compte des cas où la personne qui a une responsabilité financière à l'égard de l'enfant vit dans un Etat autre que celui de l'enfant, les Etats parties favorisent l'adhésion à des accords internationaux ou la conclusion de tels accords ainsi que l'adoption de tous autres arrangements appropriés.

Article 28

1. Les Etats parties reconnaissent le droit de

to education, and with a view to achieving this right progressively and on the basis of equal opportunity, they shall, in particular:

- (a) Make primary education compulsory and available free to all;
- (b) Encourage the development of different forms of secondary education, including general and vocational education, make them available and accessible to every child, and take appropriate measures such as the introduction of free education and offering financial assistance in case of need;
- (c) Make higher education accessible to all on the basis of capacity by every appropriate means;
- (d) Make educational and vocational information and guidance available and accessible to all children;
- (e) 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.

3. States Parties shall promote and encourage international cooperation in matters relating to education, in particular with a view to contributing to the elimination of ignorance and illiteracy throughout the world and facilitating access to scientific and technical knowledge and modern teaching methods. In this regard, particular account shall be taken of the needs of developing countries.

Article 29

1. States Parties agree that the education of the 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

l'enfant à l'éducation, et en particulier, en vue d'assurer l'exercice de ce droit progressivement et sur la base de l'égalité des chances :

- a) Ils rendent l'enseignement primaire obligatoire et gratuit pour tous;
- b) Ils encouragent l'organisation de différentes formes d'enseignement secondaire, tant général que professionnel, les rendent ouvertes et accessibles à tout enfant, et prennent des mesures appropriées, telles que l'instauration de la gratuité de l'enseignement et l'offre d'une aide financière en cas de besoin;
- c) Ils assurent à tous l'accès à l'enseignement supérieur, en fonction des capacités de chacun, par tous les moyens appropriés;
- d) Ils rendent ouvertes et accessibles à tout enfant l'information et l'orientation scolaires et professionnelles;
- e) Ils prennent des mesures pour encourager la régularité de la fréquentation scolaire et la réduction des taux d'abandon scolaire.

2. Les Etats parties prennent toutes les mesures appropriées pour veiller à ce que la discipline scolaire soit appliquée d'une manière compatible avec la dignité de l'enfant en tant qu'être humain et conformément à la présente Convention.

3. Les Etats parties favorisent et encouragent la coopération internationale dans le domaine de l'éducation, en vue notamment de contribuer à éliminer l'ignorance et l'analphabétisme dans le monde et de faciliter l'accès aux connaissances scientifiques et techniques et aux méthodes d'enseignement modernes. A cet égard, il est tenu particulièrement compte des besoins des pays en développement.

Article 29

1. Les Etats parties conviennent que l'éducation de l'enfant doit viser à :

- a) Favoriser l'épanouissement de la personnalité de l'enfant et le développement de ses dons et de ses aptitudes mentales et physiques, dans toute la mesure de leurs

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 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.

2. No part of the present article or article 28 shall be construed so as to interfere with the liberty of individuals and bodies to establish and direct educational institutions, subject always to the observance of the principle set forth in paragraph 1 of the present article and to the requirements that the education given in such institutions shall conform to such minimum standards as may be laid down by the State.

Article 30

In those States in which ethnic, religious or linguistic minorities or persons of indigenous origin exist, a child belonging to such a minority or who is indigenous shall not be denied the right, in community with other members of his or her group, to enjoy his or her own culture, to profess and practise his or her own religion, or to use his or her own language.

Article 31

1. States Parties recognize the right of the child to rest and leisure, to engage in play and recreational activities appropriate to the age of

potentialités;

b) Inculquer à l'enfant le respect des droits de l'homme et des libertés fondamentales, et des principes consacrés dans la Charte des Nations Unies;

c) Inculquer à l'enfant le respect de ses parents, de son identité, de sa langue et de ses valeurs culturelles, ainsi que le respect des valeurs nationales du pays dans lequel il vit, du pays duquel il peut être originaire et des civilisations différentes de la sienne;

d) Préparer l'enfant à assumer les responsabilités de la vie dans une société libre, dans un esprit de compréhension, de paix, de tolérance, d'égalité entre les sexes et d'amitié entre tous les peuples et groupes ethniques, nationaux et religieux, et avec les personnes d'origine autochtone;

e) Inculquer à l'enfant le respect du milieu naturel.

2. Aucune disposition du présent article ou de l'article 28 ne sera interprétée d'une manière qui porte atteinte à la liberté des personnes physiques ou morales de créer et de diriger des établissements d'enseignement, à condition que les principes énoncés au paragraphe 1 du présent article soient respectés et que l'éducation dispensée dans ces établissements soit conforme aux normes minimales que l'Etat aura prescrites.

Article 30

Dans les Etats où il existe des minorités ethniques, religieuses ou linguistiques ou des personnes d'origine autochtone, un enfant autochtone ou appartenant à une de ces minorités ne peut être privé du droit d'avoir sa propre vie culturelle, de professer et de pratiquer sa propre religion ou d'employer sa propre langue en commun avec les autres membres de son groupe.

Article 31

1. Les Etats parties reconnaissent à l'enfant le droit au repos et aux loisirs, de se livrer au jeu et à des activités récréatives propres à son âge

the child and to participate freely in cultural life and the arts.

2. States Parties shall respect and promote the right of the child to participate fully in cultural and artistic life and shall encourage the provision of appropriate and equal opportunities for cultural, artistic, recreational and leisure activity.

Article 32

1. States Parties recognize the right of the child to be protected from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral or social development.

2. States Parties shall take legislative, administrative, social and educational measures to ensure the implementation of the present article. To this end, and having regard to the relevant provisions of other international instruments, States Parties shall in particular:

- (a) Provide for a minimum age or minimum ages for admission to employment;
- (b) Provide for appropriate regulation of the hours and conditions of employment;
- (c) Provide for appropriate penalties or other sanctions to ensure the effective enforcement of the present article.

Article 33

States Parties shall take all appropriate measures, including legislative, administrative, social and educational measures, to protect children from the illicit use of narcotic drugs and psychotropic substances as defined in the relevant international treaties, and to prevent the use of children in the illicit production and trafficking of such substances.

et de participer librement à la vie culturelle et artistique.

2. Les Etats parties respectent et favorisent le droit de l'enfant de participer pleinement à la vie culturelle et artistique et encouragent l'organisation à son intention de moyens appropriés de loisirs et d'activités récréatives, artistiques et culturelles, dans des conditions d'égalité.

Article 32

1. Les Etats parties reconnaissent le droit de l'enfant d'être protégé contre l'exploitation économique et de n'être astreint à aucun travail comportant des risques ou susceptible de compromettre son éducation ou de nuire à sa santé ou à son développement physique, mental, spirituel, moral ou social.

2. Les Etats parties prennent des mesures législatives, administratives, sociales et éducatives pour assurer l'application du présent article. A cette fin, et compte tenu des dispositions pertinentes des autres instruments internationaux, les Etats parties, en particulier :

- a) Fixent un âge minimum ou des âges minimums d'admission à l'emploi;
- b) Prévoient une réglementation appropriée des horaires de travail et des conditions d'emploi;
- c) Prévoient des peines ou autres sanctions appropriées pour assurer l'application effective du présent article.

Article 33

Les Etats parties prennent toutes les mesures appropriées, y compris des mesures législatives, administratives, sociales et éducatives, pour protéger les enfants contre l'usage illicite de stupéfiants et de substances psychotropes, tels que les définissent les conventions internationales pertinentes, et pour empêcher que des enfants ne soient utilisés pour la production et le trafic illicites de ces substances.

Article 34

States 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 and materials.

Article 35

States Parties shall take all appropriate national, bilateral and multilateral measures to prevent the abduction of, the sale of or traffic 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.

Article 37

States Parties shall ensure that:

- (a) No child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment. Neither capital punishment nor life imprisonment without possibility of release shall be imposed for offences committed by persons below eighteen years of age;
- (b) No child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time;
- (c) Every child deprived of liberty shall be treated with humanity and respect for the inherent dignity of the human person, and in a manner which takes into account the needs of

Article 34

Les Etats parties s'engagent à protéger l'enfant contre toutes les formes d'exploitation sexuelle et de violence sexuelle. A cette fin, les Etats prennent en particulier toutes les mesures appropriées sur les plans national, bilatéral et multilatéral pour empêcher :

- a) Que des enfants ne soient incités ou contraints à se livrer à une activité sexuelle illégale;
- b) Que des enfants ne soient exploités à des fins de prostitution ou autres pratiques sexuelles illégales;
- c) Que des enfants ne soient exploités aux fins de la production de spectacles ou de matériel de caractère pornographique.

Article 35

Les Etats parties prennent toutes les mesures appropriées sur les plans national, bilatéral et multilatéral pour empêcher l'enlèvement, la vente ou la traite d'enfants à quelque fin que ce soit et sous quelque forme que ce soit.

Article 36

Les Etats parties protègent l'enfant contre toutes autres formes d'exploitation préjudiciables à tout aspect de son bien-être.

Article 37

Les Etats parties veillent à ce que :

- a) Nul enfant ne soit soumis à la torture ni à des peines ou traitements cruels, inhumains ou dégradants. Ni la peine capitale ni l'emprisonnement à vie sans possibilité de libération ne doivent être prononcés pour les infractions commises par des personnes âgées de moins de dix-huit ans;
- b) Nul enfant ne soit privé de liberté de façon illégale ou arbitraire. L'arrestation, la détention ou l'emprisonnement d'un enfant doit être en conformité avec la loi, n'être qu'une mesure de dernier ressort, et être d'une durée aussi brève que possible;
- c) Tout enfant privé de liberté soit traité avec humanité et avec le respect dû à la dignité de la personne humaine, et d'une manière tenant compte des besoins des personnes de son âge.

persons of his or her age. In particular, every child deprived of liberty shall be separated from adults unless it is considered in the child's best interest not to do so and shall have the right to maintain contact with his or her family through correspondence and visits, save in exceptional circumstances;

(d) Every child deprived of his or her liberty shall have the right to prompt access to legal and other appropriate assistance, as well as the right to challenge the legality of the deprivation of his or her liberty before a court or other competent, independent and impartial authority, and to a prompt decision on any such action.

Article 38

1. States Parties undertake to respect and to ensure respect for rules of international humanitarian law applicable to them in armed conflicts which are relevant to the child.

2. States Parties shall take all feasible measures to ensure that persons who have not attained the age of fifteen years do not take a direct part in hostilities.

3. States Parties shall refrain from recruiting any person who has not attained the age of fifteen years into their armed forces. In recruiting among those persons who have attained the age of fifteen years but who have not attained the age of eighteen years, States Parties shall endeavour to give priority to those who are oldest.

4. In accordance with their obligations under international humanitarian law to protect the civilian population in armed conflicts, States Parties shall take all feasible measures to ensure protection and care of children who are affected by an armed conflict.

En particulier, tout enfant privé de liberté sera séparé des adultes, à moins que l'on estime préférable de ne pas le faire dans l'intérêt supérieur de l'enfant, et il a le droit de rester en contact avec sa famille par la correspondance et par les visites, sauf circonstances exceptionnelles;

d) Les enfants privés de liberté aient le droit d'avoir rapidement accès à l'assistance juridique ou à toute autre assistance appropriée, ainsi que le droit de contester la légalité de leur privation de liberté devant un tribunal ou une autre autorité compétente, indépendante et impartiale, et à ce qu'une décision rapide soit prise en la matière.

Article 38

1. Les Etats parties s'engagent à respecter et à faire respecter les règles du droit humanitaire international qui leur sont applicables en cas de conflit armé et dont la protection s'étend aux enfants.

2. Les Etats parties prennent toutes les mesures possibles dans la pratique pour veiller à ce que les personnes n'ayant pas atteint l'âge de quinze ans ne participent pas directement aux hostilités.

3. Les Etats parties s'abstiennent d'enrôler dans leurs forces armées toute personne n'ayant pas atteint l'âge de quinze ans. Lorsqu'ils incorporent des personnes de plus de quinze ans mais de moins de dix-huit ans, les Etats parties s'efforcent d'enrôler en priorité les plus âgées.

4. Conformément à l'obligation qui leur incombe en vertu du droit humanitaire international de protéger la population civile en cas de conflit armé, les Etats parties prennent toutes les mesures possibles dans la pratique pour que les enfants qui sont touchés par un conflit armé bénéficient d'une protection et de soins.

Article 39

States Parties shall take all appropriate measures to promote physical and psychological recovery and social reintegration of a child victim of: any form of neglect, exploitation, or abuse; torture or any other form of cruel, inhuman or degrading treatment or punishment; or armed conflicts. Such recovery and reintegration shall take place in an environment which fosters the health, self-respect and dignity of the child.

Article 40

1. States Parties recognize the right of every child alleged as, accused of, or recognized as having infringed the penal law to be treated in a manner consistent with the promotion of the child's sense of dignity and worth, which reinforces the child's respect for the human rights and fundamental freedoms of others and which takes into account the child's age and the desirability of promoting the child's reintegration and the child's assuming a constructive role in society.

2. To this end, and having regard to the relevant provisions of international instruments, States Parties shall, in particular, ensure that:

- (a) No child shall be alleged as, be accused of, or recognized as having infringed the penal law by reason of acts or omissions that were not prohibited by national or international law at the time they were committed;
- (b) Every child alleged as or accused of having infringed the penal law has at least the following guarantees:
 - (i) To be presumed innocent until proven guilty according to law;
 - (ii) To be informed promptly and directly of the charges against him or her, and, if appropriate, through his or her parents or legal guardians, and to have legal or other appropriate assistance in the preparation and presentation of his or her defence;
 - (iii) To have the matter determined without

Article 39

Les Etats parties prennent toutes les mesures appropriées pour faciliter la réadaptation physique et psychologique et la réinsertion sociale de tout enfant victime de toute forme de négligence, d'exploitation ou de sévices, de torture ou de toute autre forme de peines ou traitements cruels, inhumains ou dégradants, ou de conflit armé. Cette réadaptation et cette réinsertion se déroulent dans des conditions qui favorisent la santé, le respect de soi et la dignité de l'enfant.

Article 40

1. Les Etats parties reconnaissent à tout enfant suspecté, accusé ou convaincu d'infraction à la loi pénale le droit à un traitement qui soit de nature à favoriser son sens de la dignité et de la valeur personnelle, qui renforce son respect pour les droits de l'homme et les libertés fondamentales d'autrui, et qui tient compte de son âge ainsi que de la nécessité de faciliter sa réintégration dans la société et de lui faire assumer un rôle constructif au sein de celle-ci.

2. A cette fin, et compte tenu des dispositions pertinentes des instruments internationaux, les Etats parties veillent en particulier :

- a) A ce qu'aucun enfant ne soit suspecté, accusé ou convaincu d'infraction à la loi pénale en raison d'actions ou d'omissions qui n'étaient pas interdites par le droit national ou international au moment où elles ont été commises;
- b) A ce que tout enfant suspecté ou accusé d'infraction à la loi pénale ait au moins le droit aux garanties suivantes :
 - i) Etre présumé innocent jusqu'à ce que sa culpabilité ait été légalement établie;
 - ii) Etre informé dans le plus court délai et directement des accusations portées contre lui, ou, le cas échéant, par l'intermédiaire de ses parents ou représentants légaux, et bénéficier d'une assistance juridique ou de toute autre assistance appropriée pour la préparation et la présentation de sa défense;

delay by a competent, independent and impartial authority or judicial body in a fair hearing according to law, in the presence of legal or other appropriate assistance and, unless it is considered not to be in the best interest of the child, in particular, taking into account his or her age or situation, his or her parents or legal guardians;

(iv) Not to be compelled to give testimony or to confess guilt; to examine or have examined adverse witnesses and to obtain the

participation and examination of witnesses on his or her behalf under conditions of equality;

(v) If considered to have infringed the penal law, to have this decision and any measures imposed in consequence thereof reviewed by a higher competent, independent and impartial authority or judicial body according to law;

(vi) To have the free assistance of an interpreter if the child cannot understand or speak the language used;

(vii) To have his or her privacy fully respected at all stages of the proceedings.

3. States Parties shall seek to promote the establishment of laws, procedures, authorities and institutions specifically applicable to children alleged as, accused of, or recognized as having infringed the penal law, and, in particular:

(a) The establishment of a minimum age below which children shall be presumed not to have the capacity to infringe the penal law;

(b) Whenever appropriate and desirable, measures for dealing with such children without resorting to judicial proceedings, providing that human rights and legal safeguards are fully respected.

4. A variety of dispositions, such as care, guidance and supervision orders; counselling; probation; foster care; education and

iii) Que sa cause soit entendue sans retard par une autorité ou une instance judiciaire compétentes, indépendantes et impartiales, selon une procédure équitable aux termes de la loi, en présence de son conseil juridique ou autre et, à moins que cela ne soit jugé contraire à l'intérêt supérieur de l'enfant en raison notamment de son âge ou de sa situation, en présence de ses parents ou représentants légaux;

iv) Ne pas être contraint de témoigner ou de s'avouer coupable; interroger ou faire interroger les témoins à charge, et obtenir la comparution et l'interrogatoire des témoins à décharge dans des conditions d'égalité;

v) S'il est reconnu avoir enfreint la loi pénale, faire appel de cette décision et de toute mesure arrêtée en conséquence devant une autorité ou une instance judiciaire supérieure compétentes, indépendantes et impartiales, conformément à la loi;

vi) Se faire assister gratuitement d'un interprète s'il ne comprend ou ne parle pas la langue utilisée;

vii) Que sa vie privée soit pleinement respectée à tous les stades de la procédure.

3. Les Etats parties s'efforcent de promouvoir l'adoption de lois, de procédures, la mise en place d'autorités et d'institutions spécialement conçues pour les enfants suspectés, accusés ou convaincus d'infraction à la loi pénale, et en particulier :

a) D'établir un âge minimum au-dessous duquel les enfants seront présumés n'avoir pas la capacité d'enfreindre la loi pénale;

b) De prendre des mesures, chaque fois que cela est possible et souhaitable, pour traiter ces enfants sans recourir à la procédure judiciaire, étant cependant entendu que les droits de l'homme et les garanties légales doivent être pleinement respectés.

4. Toute une gamme de dispositions, relatives notamment aux soins, à l'orientation et à la supervision, aux conseils, à la probation, au

vocational training programmes and other alternatives to institutional care shall be available to ensure that children are dealt with in a manner appropriate to their well-being and proportionate both to their circumstances and the offence.

Article 41

Nothing in the present Convention shall affect any provisions which are more conducive to the realization of the rights of the child and which may be contained in:

- (a) The law of a State party; or
- (b) International law in force for that State.

PART II

Article 42

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

Article 43

1. For the purpose of examining the progress made by States Parties in achieving the realization of the obligations undertaken in the present Convention, there shall be established a Committee on the Rights of the Child, which shall carry out the functions hereinafter provided.

2. The Committee shall consist of eighteen experts of high moral standing and recognized competence in the field covered by this Convention. The members of the Committee shall be elected by States Parties from among their nationals and shall serve in their personal capacity, consideration being given to equitable geographical distribution, as well as to the principal legal systems.

3. The members of the Committee shall be elected by secret ballot from a list of persons nominated by States Parties. Each State Party may nominate one person from among its own

placement familial, aux programmes d'éducation générale et professionnelle et aux solutions autres qu'institutionnelles seront prévues en vue d'assurer aux enfants un traitement conforme à leur bien-être et proportionné à leur situation et à l'infraction.

Article 41

Aucune des dispositions de la présente Convention ne porte atteinte aux dispositions plus propices à la réalisation des droits de l'enfant qui peuvent figurer :

- a) Dans la législation d'un Etat partie; ou
- b) Dans le droit international en vigueur pour cet Etat.

Deuxième partie

Article 42

Les Etats parties s'engagent à faire largement connaître les principes et les dispositions de la présente Convention, par des moyens actifs et appropriés, aux adultes comme aux enfants.

Article 43

1. Aux fins d'examiner les progrès accomplis par les Etats parties dans l'exécution des obligations contractées par eux en vertu de la présente Convention, il est institué un Comité des droits de l'enfant qui s'acquitte des fonctions définies ci-après.

2. Le Comité se compose de dix-huit experts de haute moralité et possédant une compétence reconnue dans le domaine visé par la présente Convention. Ses membres sont élus par les Etats parties parmi leurs ressortissants et siègent à titre personnel, compte tenu de la nécessité d'assurer une répartition géographique équitable et eu égard aux principaux systèmes juridiques.

3. Les membres du Comité sont élus au scrutin secret sur une liste de personnes désignées par les Etats parties. Chaque Etat partie peut désigner un candidat parmi ses ressortissants.

nationals.

4. The initial election to the Committee shall be held no later than six months after the date of the entry into force of the present Convention and thereafter every second year. At least four months before the date of each election, the Secretary-General of the United Nations shall address a letter to States Parties inviting them to submit their nominations within two months. The Secretary-General shall subsequently prepare a list in alphabetical order of all persons thus nominated, indicating States Parties which have nominated them, and shall submit it to the States Parties to the present Convention.

5. The elections shall be held at meetings of States Parties convened by the Secretary-General at United Nations Headquarters. At those meetings, for which two thirds of States Parties shall constitute a quorum, the persons elected to the Committee shall be those who obtain the largest number of votes and an absolute majority of the votes of the representatives of States Parties present and voting.

6. The members of the Committee shall be elected for a term of four years. They shall be eligible for re-election if renominated. The term of five of the members elected at the first election shall expire at the end of two years; immediately after the first election, the names of these five members shall be chosen by lot by the Chairman of the meeting.

7. If a member of the Committee dies or resigns or declares that for any other cause he or she can no longer perform the duties of the Committee, the State Party which nominated the member shall appoint another expert from among its nationals to serve for the remainder of the term, subject to the approval of the Committee.

4. La première élection aura lieu dans les six mois suivant la date d'entrée en vigueur de la présente Convention. Les élections auront lieu ensuite tous les deux ans. Quatre mois au moins avant la date de chaque élection, le Secrétaire général de l'Organisation des Nations Unies invitera par écrit les Etats parties à proposer leurs candidats dans un délai de deux mois. Le Secrétaire général dressera ensuite la liste alphabétique des candidats ainsi désignés, en indiquant les Etats parties qui les ont désignés, et la communiquera aux Etats parties à la présente Convention.

5. Les élections ont lieu lors des réunions des Etats parties, convoquées par le Secrétaire général au Siège de l'Organisation des Nations Unies. A ces réunions, pour lesquelles le quorum est constitué par les deux tiers des Etats parties, les candidats élus au Comité sont ceux qui obtiennent le plus grand nombre de voix et la majorité absolue des voix des représentants des Etats parties présents et votants.

6. Les membres du Comité sont élus pour quatre ans. Ils sont rééligibles si leur candidature est présentée à nouveau. Le mandat de cinq des membres élus lors de la première élection prend fin au bout de deux ans. Les noms de ces cinq membres seront tirés au sort par le président de la réunion immédiatement après la première élection.

7. En cas de décès ou de démission d'un membre du Comité, ou si, pour toute autre raison, un membre déclare ne plus pouvoir exercer ses fonctions au sein du Comité, l'Etat partie qui avait présenté sa candidature nomme un autre expert parmi ses ressortissants pour pourvoir le poste ainsi vacant jusqu'à l'expiration du mandat correspondant, sous réserve de l'approbation du Comité.

8. The Committee shall establish its own rules of procedure.

8. Le Comité adopte son règlement intérieur.

9. The Committee shall elect its officers for a period of two years.

9. Le Comité élit son bureau pour une période de deux ans.

10. The meetings of the Committee shall normally be held at United Nations Headquarters or at any other convenient place as determined by the Committee. The Committee shall normally meet annually. The duration of the meetings of the Committee shall be determined, and reviewed, if necessary, by a meeting of the States Parties to the present Convention, subject to the approval of the General Assembly.

10. Les réunions du Comité se tiennent normalement au Siège de l'Organisation des Nations Unies, ou en tout autre lieu approprié déterminé par le Comité. Le Comité se réunit normalement chaque année. La durée de ses sessions est déterminée et modifiée, si nécessaire, par une réunion des Etats parties à la présente Convention, sous réserve de l'approbation de l'Assemblée générale.

11. The Secretary-General of the United Nations shall provide the necessary staff and facilities for the effective performance of the functions of the Committee under the present Convention.

11. Le Secrétaire général de l'Organisation des Nations Unies met à la disposition du Comité le personnel et les installations qui lui sont nécessaires pour s'acquitter efficacement des fonctions qui lui sont confiées en vertu de la présente Convention.

12. With the approval of the General Assembly, the members of the Committee established under the present Convention shall receive emoluments from United Nations resources on such terms and conditions as the Assembly may decide.

12. Les membres du Comité institué en vertu de la présente Convention reçoivent, avec l'approbation de l'Assemblée générale, des émoluments prélevés sur les ressources de l'Organisation des Nations Unies dans les conditions et selon les modalités fixées par l'Assemblée générale.

Article 44

1. States Parties undertake to submit to the Committee, through the Secretary-General of the United Nations, reports on the measures they have adopted which give effect to the rights recognized herein and on the progress made on the enjoyment of those rights

- (a) Within two years of the entry into force of the Convention for the State Party concerned;
- (b) Thereafter every five years.

Article 44

1. Les Etats parties s'engagent à soumettre au Comité, par l'entremise du Secrétaire général de l'Organisation des Nations Unies, des rapports sur les mesures qu'ils auront adoptées pour donner effet aux droits reconnus dans la présente Convention et sur les progrès réalisés dans la jouissance de ces droits :

- a) Dans les deux ans à compter de la date de l'entrée en vigueur de la présente Convention pour les Etats parties intéressés;
- b) Par la suite, tous les cinq ans.

2. Reports made under the present article shall indicate factors and difficulties, if any,

2. Les rapports établis en application du présent article doivent, le cas échéant, indiquer

affecting the degree of fulfilment of the obligations under the present Convention. Reports shall also contain sufficient information to provide the Committee with a comprehensive understanding of the implementation of the Convention in the country concerned.

3. A State Party which has submitted a comprehensive initial report to the Committee need not, in its subsequent reports submitted in accordance with paragraph 1 (b) of the present article, repeat basic information previously provided.

4. The Committee may request from States Parties further information relevant to the implementation of the Convention.

5. The Committee shall submit to the General Assembly, through the Economic and Social Council, every two years, reports on its activities.

6. States Parties shall make their reports widely available to the public in their own countries.

Article 45

In order to foster the effective implementation of the Convention and to encourage international co-operation in the field covered by the Convention:

(a) The specialized agencies, the United Nations Children's Fund, and other United Nations organs shall be entitled to be represented at the consideration of the implementation of such provisions of the present Convention as fall within the scope of their mandate. The Committee may invite the specialized agencies, the United Nations Children's Fund and other competent bodies as it may consider appropriate to provide expert advice on the implementation of the Convention in areas falling within the scope of their respective mandates. The Committee may invite the specialized agencies, the United Nations Children's Fund, and other United

les facteurs et les difficultés empêchant les Etats parties de s'acquitter pleinement des obligations prévues dans la présente Convention. Ils doivent également contenir des renseignements suffisants pour donner au Comité une idée précise de l'application de la Convention dans le pays considéré.

3. Les Etats parties ayant présenté au Comité un rapport initial complet n'ont pas, dans les rapports qu'ils lui présentent ensuite conformément à l'alinéa b du paragraphe 1 du présent article, à répéter les renseignements de base antérieurement communiqués.

4. Le Comité peut demander aux Etats parties tous renseignements complémentaires relatifs à l'application de la Convention.

5. Le Comité soumet tous les deux ans à l'Assemblée générale, par l'entremise du Conseil économique et social, un rapport sur ses activités.

6. Les Etats parties assurent à leurs rapports une large diffusion dans leur propre pays.

Article 45

Pour promouvoir l'application effective de la Convention et encourager la coopération internationale dans le domaine visé par la Convention :

a) Les institutions spécialisées, le Fonds des Nations Unies pour l'enfance et d'autres organes des Nations Unies ont le droit de se faire représenter lors de l'examen de l'application des dispositions de la présente Convention qui relèvent de leur mandat. Le Comité peut inviter les institutions spécialisées, le Fonds des Nations Unies pour l'enfance et tous autres organismes qu'il jugera appropriés à donner des avis spécialisés sur l'application de la Convention dans les domaines qui relèvent de leurs mandats respectifs. Il peut inviter les institutions spécialisées, le Fonds des Nations Unies pour l'enfance et d'autres organes des Nations Unies

Nations organs to submit reports on the implementation of the Convention in areas falling within the scope of their activities;

(b) The Committee shall transmit, as it may consider appropriate, to the specialized agencies, the United Nations Children's Fund and other competent bodies, any reports from States Parties that contain a request, or indicate a need, for technical advice or assistance, along with the Committee's observations and suggestions, if any, on these requests or indications;

(c) The Committee may recommend to the General Assembly to request the Secretary-General to undertake on its behalf studies on specific issues relating to the rights of the child;

(d) The Committee may make suggestions and general recommendations based on information received pursuant to articles 44 and 45 of the present Convention. Such suggestions and general recommendations shall be transmitted to any State Party concerned and reported to the General Assembly, together with comments, if any, from States Parties.

PART III

Article 46

The present Convention shall be open for signature by all States.

Article 47

The present Convention is subject to ratification. Instruments of ratification shall be deposited with the Secretary-General of the United Nations.

Article 48

The present Convention shall remain open for accession by any State. The instruments of accession shall be deposited with the Secretary-General of the United Nations.

Article 49

1. The present Convention shall enter into force on the thirtieth day following the date of

à lui présenter des rapports sur l'application de la Convention dans les secteurs qui relèvent de leur domaine d'activité;

b) Le Comité transmet, s'il le juge nécessaire, aux institutions spécialisées, au Fonds des Nations Unies pour l'enfance et aux autres organismes compétents tout rapport des Etats parties contenant une demande ou indiquant un besoin de conseils ou d'assistance techniques, accompagné, le cas échéant, des observations et suggestions du Comité touchant ladite demande ou indication;

c) Le Comité peut recommander à l'Assemblée générale de prier le Secrétaire général de procéder pour le Comité à des études sur des questions spécifiques touchant les droits de l'enfant;

d) Le Comité peut faire des suggestions et des recommandations d'ordre général fondées sur les renseignements reçus en application des articles 44 et 45 de la présente Convention. Ces suggestions et recommandations d'ordre général sont transmises à tout Etat partie intéressé et portées à l'attention de l'Assemblée générale, accompagnées, le cas échéant, des observations des Etats parties.

Troisième partie

Article 46

La présente Convention est ouverte à la signature de tous les Etats.

Article 47

La présente Convention est sujette à ratification. Les instruments de ratification seront déposés auprès du Secrétaire général de l'Organisation des Nations Unies.

Article 48

La présente Convention restera ouverte à l'adhésion de tout Etat. Les instruments d'adhésion seront déposés auprès du Secrétaire général de l'Organisation des Nations Unies.

Article 49

1. La présente Convention entrera en vigueur le trentième jour qui suivra la date du dépôt auprès du Secrétaire général de l'Organisation

deposit with the Secretary-General of the United Nations of the twentieth instrument of ratification or accession.

2. For each State ratifying or acceding to the Convention after the deposit of the twentieth instrument of ratification or accession, the Convention shall enter into force on the thirtieth day after the deposit by such State of its instrument of ratification or accession.

Article 50

1. Any State Party may propose an amendment and file it with the Secretary-General of the United Nations. The Secretary-General shall thereupon communicate the proposed amendment to States Parties, with a request that they indicate whether they favour a conference of States Parties for the purpose of considering and voting upon the proposals. In the event that, within four months from the date of such communication, at least one third of the States Parties favour such a conference, the Secretary-General shall convene the conference under the auspices of the United Nations. Any amendment adopted by a majority of States Parties present and voting at the conference shall be submitted to the General Assembly for approval.

2. An amendment adopted in accordance with paragraph 1 of the present article shall enter into force when it has been approved by the General Assembly of the United Nations and accepted by a two-thirds majority of States Parties.

3. When an amendment enters into force, it shall be binding on those States Parties which have accepted it, other States Parties still being bound by the provisions of the present Convention and any earlier amendments which

des Nations Unies du vingtième instrument de ratification ou d'adhésion.

2. Pour chacun des Etats qui ratifieront la présente Convention ou y adhéreront après le dépôt du vingtième instrument de ratification ou d'adhésion, la Convention entrera en vigueur le trentième jour qui suivra le dépôt par cet Etat de son instrument de ratification ou d'adhésion.

Article 50

1. Tout Etat partie peut proposer un amendement et en déposer le texte auprès du Secrétaire général de l'Organisation des Nations Unies. Le Secrétaire général communique alors la proposition d'amendement aux Etats parties, en leur demandant de lui faire savoir s'ils sont favorables à la convocation d'une conférence des Etats parties en vue de l'examen de la proposition et de sa mise aux voix. Si, dans les quatre mois qui suivent la date de cette communication, un tiers au moins des Etats parties se prononcent en faveur de la convocation d'une telle conférence, le Secrétaire général convoque la conférence sous les auspices de l'Organisation des Nations Unies. Tout amendement adopté par la majorité des Etats parties présents et votants à la conférence est soumis pour approbation à l'Assemblée générale de l'Organisation des Nations Unies.

2. Tout amendement adopté conformément aux dispositions du paragraphe 1 du présent article entre en vigueur lorsqu'il a été approuvé par l'Assemblée générale des Nations Unies et accepté par une majorité des deux tiers des Etats parties.

3. Lorsqu'un amendement entre en vigueur, il a force obligatoire pour les Etats parties qui l'ont accepté, les autres Etats parties demeurant liés par les dispositions de la présente Convention et par tous amendements antérieurs acceptés

they have accepted.

Article 51

1. The Secretary-General of the United Nations shall receive and circulate to all States the text of reservations made by States at the time of ratification or accession.

2. A reservation incompatible with the object and purpose of the present Convention shall not be permitted.

3. Reservations may be withdrawn at any time by notification to that effect addressed to the Secretary-General of the United Nations, who shall then inform all States. Such notification shall take effect on the date on which it is received by the Secretary-General.

Article 52

A State Party may denounce the present Convention by written notification to the Secretary-General of the United Nations. Denunciation becomes effective one year after the date of receipt of the notification by the Secretary-General.

Article 53

The Secretary-General of the United Nations is designated as the depositary of the present Convention.

Article 54

The original of the present Convention, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations. In witness thereof the undersigned plenipotentiaries, being duly authorized thereto by their respective Governments, have signed the present Convention.

par eux.

Article 51

1. Le Secrétaire général de l'Organisation des Nations Unies recevra et communiquera à tous les Etats le texte des réserves qui auront été faites par les Etats au moment de la ratification ou de l'adhésion.

2. Aucune réserve incompatible avec l'objet et le but de la présente Convention n'est autorisée.

3. Les réserves peuvent être retirées à tout moment par notification adressée au Secrétaire général de l'Organisation des Nations Unies, lequel en informe tous les Etats parties à la Convention. La notification prend effet à la date à laquelle elle est reçue par le Secrétaire général.

Article 52

Tout Etat partie peut dénoncer la présente Convention par notification écrite adressée au Secrétaire général de l'Organisation des Nations Unies. La dénonciation prend effet un an après la date à laquelle la notification a été reçue par le Secrétaire général.

Article 53

Le Secrétaire général de l'Organisation des Nations Unies est désigné comme dépositaire de la présente Convention.

Article 54

L'original de la présente Convention, dont les textes anglais, arabe, chinois, espagnol, français et russe font également foi, sera déposé auprès du Secrétaire général de l'Organisation des Nations Unies. EN FOI DE QUOI les plénipotentiaires soussignés, dûment habilités par leurs gouvernements respectifs, ont signé la présente Convention.