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**Chair**

**Mr. Kevin Sorenson**

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Tuesday, February 20, 2007

• (0905)

[English]

**The Chair (Mr. Kevin Sorenson (Crowfoot, CPC)):** Good morning, everyone.

This is meeting number 41 of the Standing Committee on Foreign Affairs and International Development, on Tuesday, February 20. This morning we continue on our study of democratic development.

We have with us today Ms. Kathleen Mahoney, professor with the Faculty of Law at the University of Calgary. Ms. Mahoney was before our committee last, I think, in 1999. I'll say that even at that time her credentials were very impressive, and I think they're even more impressive when you look at the work she's done recently. She has been a law professor for almost 30 years. By now she has taught on human rights extensively in many parts of the world, from the University of Chicago to the University of Adelaide in Australia.

Her experience in human rights more or less covers the spectrum. She has published in many journals in Canada and throughout the world. She has organized conferences on various issues. Most of her advocacy work is pro bono. She was a member of the legal team representing Bosnia in its case in the World Court against Serbia prior to the international criminal tribunal being struck. She is a fellow of the Royal Society of Canada.

We certainly do appreciate your being with our committee this morning. As I said to you earlier, we're getting closer to the end of our study on democratic development. We will be coming forward with a report that will be tabled in the House of Commons and to which we will expect the government to respond. We'll take all this information, and it will become part of the fairly comprehensive study and report that we're doing.

Welcome here this morning. We look forward to your opening comments. We will then go into the first round of questioning.

There may be some questions in French. I'm not certain if you're bilingual.

Welcome, Ms. Mahoney.

**Professor Kathleen Mahoney (Professor, Faculty of Law, University of Calgary):** Thank you, Chairman.

It's a great honour for me to be here and meet with you. This is such a huge task that you have in reporting on democratic development, and presumably the best ways to go about supporting democratic development in the world.

My experience, as you've said, Mr. Chair, is quite broad. From my professional bread-and-butter job, which is teaching at the university, I have taught in this area for many years. But probably more relevant to your discussions and work here are my extracurricular activities in this field. I'm a lawyer and a law professor—I'm a practising lawyer as well as an academic—and I've done a considerable amount of consulting work in the law.

I have done a lot of work—in fact I was a pioneer in Canada—in presenting the idea to the legal profession that judges could not be assumed to know everything just because they were judges, and that judges required ongoing judicial education to ensure that the rule of law is always protected and that justice is dispensed in the fairest possible way, taking into account the rights of all of those who may appear before the courts, or indeed may be affected by the courts.

Back 20 to 25 years ago, it was evident that justice and fairness weren't always to be assumed in the sense of social context in human rights, that human rights are an ongoing, evolutionary concept, and that the judges and the legal profession have to move with the evolution of these concepts.

My first international experience in this regard was in South Africa. After the apartheid regime was overturned and a seemingly more democratic regime replaced it, nevertheless there were still huge issues of human rights protection for everyone, not just the people who had been persecuted because of race, but other serious issues with respect to women, ethnic minorities, certainly racial majorities and minorities. I worked with an organization called Lawyers for Human Rights and started this notion that judges and magistrates would have to, in order to make this transition, also learn about democratic principles, learn about the rule of law, and learn about fundamental human rights protection in order to incorporate those values into their judgments.

There was a centre that worked with academics as well as the judiciary and the magistrates, and there was a centre started at the University of Cape Town called the Law, Race, and Gender Research Unit, a name something like that. But it became a very vital and important centre in the development of South Africa's new approach to itself and the world, and it's still a very vital organization there. Its job is to train new judges as well as to develop continuing education for judges who have been judges for quite some time. That, in my own view, is one of the more successful approaches to incorporating democratic principles into a society.

The reason I say that is because on one hand you're working with elites, you're working with powerful people, who have an ability to make change and who the society usually respects. It's very difficult to work in a situation where the society doesn't respect the judiciary—and I'll talk about that in a few moments—but it's usually effective because of the stature of the people you're dealing with. But also, at the same time they are in contact with the grassroots by virtue of their job. They are seeing people on a daily basis who are not usually like them, people who have problems, companies that have problems, disputes that are needing to be resolved. So you have both sides of society interacting through the concept of the judicial system. So if the people who are making the decisions and expressing the values of the society are effective, are respected, and are listened to, then the chances for democratic reform are much greater than, let's say, working in some little pockets of society that don't have access to power.

• (0910)

It's not to say that those things aren't important, but what I'm talking about here is effectiveness and measurable change in relatively short periods of time. It's been my experience that working with judiciaries under certain conditions can certainly promote that kind of change.

When I was chair of the International Centre for Human Rights and Democratic Development in Montreal—I was chair of the board for six years—that organization had the mandate of democratic development and human rights. And it had a whole range, of course, of projects and strategies to assist developing countries and emerging democracies in respecting the rule of law and in developing democratic institutions.

That centre's been evaluated. You should have access to those documents. Just like any place that's trying to make fundamental change, depending on what is done and how it's done and over what period of time, it's often difficult to measure. But by and large, the work of the centre has been successful—incrementally successful. They've gone through several different evaluations and re-examinations of what's important and what priorities they should be looking at. Again, that's very reflective of the notion that human rights and world conditions are always on the move and evolving, and human rights organizations, aid to emerging democracies, and so on, must move with the times.

I've also worked here in Canada with judges—as I mentioned, I was a pioneer in identifying the need—to develop curriculum, to organize conferences, and to critique the status quo and point out the need for change.

I've worked with indigenous groups in Canada, primarily in the last three years, on the residential schools settlement. I brought to that table concepts of human rights, restorative justice, and reconciliation. And largely because of the efforts of the work I did and that the Assembly of First Nations did, that settlement for residential school abuse did not only incorporate compensation for physical and sexual abuse and for the inherent racism in the policy to assimilate native children into white culture. Over and above that was the idea of truth and reconciliation and telling the story. To have non-aboriginal Canadians understand what went on there, in my

view, is exceedingly important in terms of restorative justice and reconciliation.

In order to do that work, it required a lot of study and looking at international experiences, as well. So I do believe, myself, very strongly, that reconciliation and restorative justice principles are extremely important in our assistance to other countries in democratic development. Many emerging democracies have problems not dissimilar to our own in terms of racial discrimination and gender discrimination. But some of them have much more severe problems, coming out of war situations and conflict. So reconciliation, if that does not occur, well, you can throw all sorts of money at problems and you'll never see much progress in terms of institutions of democracy developing and the mutual trust and confidence that that requires.

With those just very preliminary remarks, I'll try to answer your questions the best I can. I've prepared most of my thinking here for today on the area of judicial education—that branch of democratic institutions—but I can try to answer whatever other questions you may have in a more general way.

• (0915)

**The Chair:** Thank you, Ms. Mahoney.

We have a number of replacement members here today, and I'm not certain if they were able to take a look at your bio before to see some of the work you've done. But we certainly appreciate your comments.

We'll go for the first round to Ms. Minna, and you have seven minutes.

**Hon. Maria Minna (Beaches—East York, Lib.):** Thank you, Ms. Mahoney. It was good to listen to you.

I did some international work while I was Minister for International Cooperation, and I'm quite interested in the work you've done. It's interesting, the presentation you made this morning.

I wanted to ask if you could expand a little bit. Have you done any work with countries that are in the process of reviewing their judiciary structure, in democracies that haven't gone through the huge change that would have happened in, say, South Africa? I'm thinking of China, for instance. I know that Canada has judges there and that they're doing some work with the judiciary, but it's a slower process and it's in an environment that is quite different and more structured. Do you think it's working in that area? If you don't have that experience, I apologize, and I'll go on to something else.

**Prof. Kathleen Mahoney:** A number of years ago, when Canada supported a project with China at the University of Ottawa, I was a member of that team. It was the first human rights organization that had ever been recognized by China, by the government, as being something they wanted to listen to. We talked about the importance of the rule of law—it was that basic. Subsequent to that, China adopted the rule of law as part of their administration of justice.

But perhaps more relevant to your question is I've recently been appointed Canadian director of the Vietnam project on judicial strengthening. To my knowledge, this is the largest investment Canada has made so far in this area, \$12 million. It's actually \$12.5 million, but I think the \$500,000 is being contributed by the Vietnamese government.

This project is very interesting, in that Vietnam, being a communist country, has become a member of the WTO as of November and is highly motivated to change their judiciary. In my experience, there's been resistance to this kind of reform of the judiciary for all sorts of reasons, but by and large a lot of judges in our country as well seem to think, or did at one time, that judicial education was not necessary. They knew enough, and once they were appointed judges, that was it.

In most cases, you have this threshold of resistance to get over at first, but in Vietnam it's quite different and it's been driven by the market, which is very interesting. I also believe that not only is judicial education important for respect for human rights and equality and the values that Canadians cherish, but now more than ever, it's seen as integral to successful dealings in the global market.

When I was recently in Vietnam speaking to the senior justice of the Supreme People's Court, they were asking for help, for example, in dealing with international trade agreements because it's not their experience to have to deal with these. They foresee themselves having to resolve disputes and they're not sure how to do it. They're not sure of the principles that will apply. They're not sure about international conventions on human rights, for example, that they have signed on to but have never really had to deal with. Because in communist countries, of course, the judges do the government's bidding; there's no independence of the judiciary.

What we discovered was, for example, there's a position called the procurator in their courts. The judges sit at the bench and the lawyers sit out here and the accused, or whatever the dispute might be, and the procurator sits beside the judge. The procurator's job is to report to the government what the judge has done and what has transpired in the courtroom. That gives you some indication about the independence of the judiciary. Also, these people train right alongside the judges in the judicial academy.

What we're doing there is working very much step-by-step. It's a five-year project and right now it's in the needs assessment phase. I brought our overall work plan, which will have many, many outputs over the five years, everything from examination banks to codes of conduct, to textbooks on substantive issues, to pedagogical techniques and curriculum development for human rights seminars, involvement in civil society, techniques of doing that to assist the judges in developing understanding of ethnic minorities and their values and cultures, etc. So there's a whole range of activities and projects and outcomes that will occur over the next five years.

You see, one of the problems in this field so far is that a lot of judicial education has been very episodic. You go and have a conference for three days in some country in Africa and think when you walk away everything is going to change. It doesn't work that way. It's like educating anyone: you start off with curriculum and you have progress, development, you have evaluations and you have

markers you're trying to achieve. So I think we're now into an era of a much more sophisticated approach to these issues.

• (0920)

I think we're seeing that the recipient countries are far more aware of how critically important the judiciary is, not just in the courtroom to dispense justice, but in developing public confidence in democracy. They're seeing the judiciary as an arm of it that must be developed along with governance structures in the mainstream.

**The Chair:** Thank you.

I know Ms. Minna has another quick question.

**Hon. Maria Minna:** I know that Canada's doing a terrific job in working with the judiciary system abroad. You mentioned earlier restorative justice and possible truth and reconciliation in our aboriginal communities. We know there's a problem with respect to the large number of aboriginal women and aboriginals in general in our jails. There's a problem in our system.

I wonder if you can tell us what we should be doing there, since you mentioned it. Do you have some knowledge or understanding of what we ought to be doing and are not doing to improve our situation?

• (0925)

**Prof. Kathleen Mahoney:** That's a very big question.

**The Chair:** We unfortunately don't have very much time for the answer, so keep it very quick.

**Prof. Kathleen Mahoney:** I think that speaks to the need for judicial education in our own country to focus on some of the areas where we really have some problems. I could point you to a number of cases where there are obvious problems between the understanding of the judiciary and the problems as they present themselves about women, violence, poverty, appreciation of the judicial system, and understanding of it.

In Calgary a very interesting project has been going on at the Tsuu T'ina reserve on incorporating community values into the sentencing role. It's all run by an aboriginal judge, peacemakers in the community, and the community itself. It is having very positive results and is well accepted by the community.

So it strikes me that Canada has to work in this area in its own backyard, and also in bringing our values abroad and helping other people who have indicated they want us to assist them.

**The Chair:** Thank you, Ms. Mahoney.

We'll go to the Bloc.

[Translation]

**Mrs. Vivian Barbot (Papineau, BQ):** Good day, Ms. Mahoney. Thank you for joining us.

We've just had a taste of bilingualism and experienced the joys of simultaneous translation. I don't know why it is, but when French is spoken in this and in other forums, we always get the impression that it's some kind of inconvenience. Each time, it seems a little more effort is required to get things done. There, I've said my piece.

I had the pleasure of meeting you several times in Montreal when I served as president of the Fédération des femmes du Québec. I know how very interested you are in gender and equality issues.

I would like to draw a connection between judicial education and the presence of women in this field. In developing, and more particularly in underdeveloped countries, women are not visibly present in this field.

When you speak of education, are you talking about actively promoting gender equality?

[*English*]

**Prof. Kathleen Mahoney:** Yes, thank you. I apologize for not being fluent in French. I can understand a little bit, but I would probably slow things down. It's too bad that out in western Canada we don't have the opportunity to speak French as much as people do in Ottawa and Quebec.

In any event, yes, you've put your finger on a very important part of democratic development generally, and judicial education in particular. Of course, half of the world's population are women, and nowhere in the world do women enjoy equality with men. That's a very important issue.

There are all sorts of cultural differences, of course, in different places in the world, and that fact has to be taken into account.

But there is the Universal Declaration of Human Rights, which guarantees equality, and all of the other international human rights instruments reflect that notion. Canada certainly stands for that principle. In my work, part and parcel of any project is the awareness that one has to instill the importance of gender equality.

This is often not an easy task. I was talking earlier about resistance. That whole notion of the subordination of women is definitely a pocket of resistance. It's something that some like to suggest is cultural and should be kept that way.

However, I think that in most countries, and I'll use Vietnam again as my example.... It's not a country that historically has championed gender equality, but now they are realizing that women are integral to the success of the economy and of families, that the worth and the importance of the family have to be considered in a holistic way, in a realization that women are being educated, are taking their place in the public domain, and that the society has to respond in appropriate ways so that the families can thrive under those circumstances.

So yes, absolutely integral to judicial education programs has been consciousness-raising about the reality of women's lives. Violence against women has been a very important component—and the access to justice issues: that women, by and large in most countries of the world, do not have access to justice. That engages issues such as legal aid; such as awareness of the judiciary about who isn't in front of them in the courtroom, and why they aren't, and how you bring them in to hear from them; issues in terms of family law and support for women, the support for children. All of those issues are

things that are integrally incorporated into judicial education programs.

It used to be, at the beginning, that the focus was almost entirely on social context issues and on gender equality. As I said, as time went on, it became evident that there were many other facets, such as the administration of the courts, the procedures involved in cases. All of these things that support the judiciary needed to have the assistance as well. But what we've always held as a fundamental value is that everything should be looked at through the lens of equality, so that even procedures—I shouldn't say “even” procedures—can be very weighted against certain ethnic groups, or minority groups, or women, so that they don't even get access.

That is an integral component, and I think CIDA now recognizes that in its funding requirements: that it be the lens that any funding for this type of work has to take into account.

• (0930)

**The Chair:** You have another minute and a half.

[*Translation*]

**Mrs. Vivian Barbot:** You also emphasized the importance of reconciliation. We tend to think of reconciliation only when there is an obvious war or conflict raging. However, in countries that do not have a democratic system of government, rival factions exist.

In such instances, is it possible to think in these terms? Is reconciliation even feasible?

[*English*]

**Prof. Kathleen Mahoney:** Right now in the world I think there are something like 62 truth commissions that have been organized. There are some successful commissions, I think, and some not so successful.

Reconciliation has many different components. Of course it includes things such as apologies, for example. It includes things such as recognizing the harm that's been done. It includes putting in place structures that ensure it will never happen again. And all of the above include making people who have been victims of discrimination or racism or abuse or subordination trust a society, trust a democratic or any kind of government structure.

So as I said earlier, in our own context here in Canada, you just can't throw money at a problem and think it's going to be resolved. It takes more than that. It's much more holistic than that. So the justice system has to strive for that too, and that's why it's so important for people to have access to the courts, for judges to be empathetic and understanding of who's in front of them so that they understand the different cultural ideas about children or about women or about the proper conduct of family life in certain situations. And you don't get that if people have just been very narrow in their life experience or have just had a very confined idea of what the law is all about, a set of rules and procedures. It's much more than that.

Reconciliation can be seen as part and parcel of the administration of justice, or it can be extra added for reasons to avoid a civil war or reasons to bring people onside to avoid future civil strife or separation and those kinds of things. So I would see it as both. I think it has to be integral to the day-to-day operation of justice as well as in some situations require extra added effort such as we are going to do in Canada with the truth and reconciliation commission as a result of residential school abuse.

• (0935)

**The Chair:** Thank you, Madame.

Mr. Goldring.

**Mr. Peter Goldring (Edmonton East, CPC):** Ms. Mahoney, welcome.

Ms. Mahoney, you had mentioned just a little earlier that in some of these countries the justice simply does the government's bidding, and I think that we're seeing evidence of that in many of the countries. But beyond just identifying that as a singular problem, what we're finding in the examination of democratic development is that it really takes the involvement of many or several pillars, I guess you could say, to support any evolution and real change in the country from of course justice and human rights, but also the security, the governance part because of the connection with justice, poverty reduction, economic development, electoral reform and then overall education, and education not just at the academic level, but education of the population from the grade school level so that over a period of time there will be a change in the sensitivity of the basic population to what these improvements can bring about.

When we look at a country like Haiti, where there are extreme difficulties at all levels, have you had experience with the Haitian justice system that you could comment on? Secondly, Afghanistan seems to be one of the later concerns and there's been commentary from Afghanistan that the work in governance is beginning at the tribal and village level. But how does that interact with the justice system? Are there justice system difficulties that are cultural—tribal law, whatever—and that are insurmountable, given our style and way of thinking? Could you comment on those two countries?

**Prof. Kathleen Mahoney:** First of all, I totally agree with your preliminary statement that all these things are interconnected and very important for overall democratic development. I've focused on the judiciary because that's what I know the most about, but definitely all of those things are important.

I don't know a lot about Haiti, to be honest with you, but I know a little about Afghanistan. I do know that these programs don't work unless there is a desire to have them, number one.

There also have to be some fundamentals in place. It can't be an anarchical situation. There's no point in trying to educate judges if there is no respect for the judiciary, for example, or no respect for law and order or the rule of law. There has to be some basic template to work on.

Having said that, it is very important to see what is going on at the tribal and village level, especially in poor countries. In Vietnam, we're doing that as well. Not only is there a formal justice system, which some people have access to—businesses and wealthier individuals—but in developing countries and emerging democracies,

they often have village systems. But these village systems can often be tyrannical and very counterproductive. This was the case in South Africa

In South Africa, they had these institutions called the people's courts out in the townships. Some of them perhaps worked okay, but there were some that were brutal examples of very rough justice. People were flogged and there was very little adherence to any kind of principle or rule. It was an episodic kind of rough justice in which family vengeance, tribal vengeance, and so on, could interfere with what was going on.

So working at that level is very important. Instilling in a basic grassroots system some fundamental rules and principles can be very effective. I mentioned earlier that just outside of Calgary, on the Tsuu T'ina reserve, there is an experiment going on that has been very effective.

Up in the Yukon, Justice Barry Stuart—he's the former Chief Justice of the Yukon Territorial Court and is in fact on the Vietnam project with me—developed a community-based sentencing approach. If someone pleaded guilty to an offence—let's say it was a family violence type of offence or a small robbery—they could be channeled into a community-based system of sentencing, where the community would take a role in dealing with this individual. Certain people would take on the role of, say, taking a person out onto the land to hunt, trap, and bring things back to the village to feed the elders and do things like that, as part of their reconciliation with the community for what they had done.

In other situations, like those of family violence, for example, you might bring in the family members and extended members of the community who are impacted by this type of family violence in the community, so that there can be a healing that takes place. The perpetrator apologizes to the victim and people talk about how they can deal with this problem in a better way, other than to send somebody out of the village to a city to put them in jail for a few years, only to have them come back worse than they were when they left.

These experiments have shown some considerable success in restoring harmony to the community, in restoring relationships, in assisting in developing a justice system that would otherwise be inaccessible. In some situations in remote communities, it's impractical to suggest the presence of a courthouse, with judges and prosecutors and lawyers. It just isn't going to happen. But there are other ways in which principles of fundamental justice and respect for the rule of law can be instilled in communities, with creative grassroots engagement, with responsible members of the communities, elders, or, as they call this person in Tsuu T'ina, a peacemaker who brings people together and organizes these sessions.

It's not separating them from the larger community. In fact, there's a facility to go back into the court system if there's lack of cooperation or if the judge feels this isn't sufficient to deal with the problem. The courts can then take over this particular problem that may be existing in the community.

• (0940)

These alternative solutions are important because they can be done economically and they can be done through strengthening the local resources that are there.

**The Chair:** Thank you.

We'll go to Madam McDonough.

**Ms. Alexa McDonough (Halifax, NDP):** Thank you very much.

Thank you for being before the committee today. I have so many questions I'd like to ask, and so little time to ask. Actually, your latter reference to the work of Barry Stuart and alternate approaches and so on really leads directly into my first question. I'll just ask both questions, which are actually a bit unrelated.

I know that you're very aware, from your legal expertise and also from your extensive work with Rights and Democracy, that there's a world of difference between democracy-building or democratization rooted in international human rights, and democracy-building that is perhaps more accurately called "democracy promotion", which is rooted in self-interest and the imposition of particular ideologies.

In the context of this committee's work, which is to look at Canada's approach to democracy-building and what sort of role we might take, what kinds of models we might look at, I wanted to ask whether you have particular views, from your extensive experience, about the kind of approach that Canada ought to be embracing. We've been looking at a number of different models. As you know, Rights and Democracy exists. The Parliamentary Centre exists. Both have various aspects of capacity-building and so on. Would it be your view that we should try to incorporate what they're doing, tie in with it, and so on? Or are there other models you would propose, some of them being much more political party based?

The second question is not totally unrelated, but may seem a little different. In our developing an approach to that, would it be your view that we ought to look specifically at some of the things happening within first nations within Canada? Because one of the things I've been very struck with as we venture out into developing countries—and most recently, a couple of weeks I spent in Africa—is that there's a certain element of "physician, heal thyself" that we are faced with, looking in our own mirror but also in talking with people. In northern Uganda, where there's a tremendous need and frankly a drive with Canadian leadership around truth and reconciliation with the Acholi people and the Lord's Resistance Army, you're just reminded of exactly the point you've made: that within first nations and some of the things happening here, perhaps there are things we need to understand more about and take more responsibility for if we're going to be credible on the world stage in terms of our contribution to democracy-building.

• (0945)

**Prof. Kathleen Mahoney:** That's quite a lot, all right.

On models, it is important that you understand the world we live in now, one that seems to be dominated by ideologies, by fundamentalisms regardless of what they are—Hindu fundamentalism, Islamic fundamentalism, Christian fundamentalism. In terms of human rights, these ideologies have spawned a concept of cultural relativism, which is something that is very important for everyone to

understand in terms of how damaging it can be. It is the arch enemy of the universality of human rights.

There is a huge difference between cultural relativism and a margin of appreciation in having baseline values. That is the importance of secularism as well, as opposed to fundamentalism.

One way of looking at the foundation of any of this work is to say that human rights are really the secular opposite of all of these fundamentalisms. If programs are based on that model with margins of appreciation, for sure....

This is where the Strasbourg Court, in the Council of Europe, has been so successful in dealing with things in terms of countries that have different fundamental values, such as Turkey versus Germany, for example, or Ireland versus France. Turkey and Ireland are still theocracies, but they want to participate in democratic exchange. They want to become credible partners in the modern world. Even though they have certain values that are different from the mainstream, the European Court of Human Rights in Strasbourg has been able to make decisions when citizens clash with fundamental principles that are set out in the Strasbourg convention, yet still have freedom of religion respected. It's the separation of church and state that the court insists upon.

There is appreciation for different peoples' ways of running their societies, but when it comes to fundamental values, there has to be a separation there. The secular human rights standards can then prevail.

In my view, it's very important for Canada to maintain the position in the world that there has to be public policy grounded in human rights values. Otherwise, it becomes extremely difficult.

The second fundamental value in a model such as this is that it's very important for people to incorporate and develop democracy through their own institutions, on their own set of priorities. Even mainstream priorities in Canada aren't necessarily going to work for first nations, for example. It's important for them, through self-government, to develop their own priorities and to preserve their own cultural values, yet to also incorporate within those cultural values a baseline of human rights that can take into account their cultural realities of economic, social, and cultural rights that appreciate and respect group rights as well as individual rights.

The dominant culture in Canada tends to appreciate individual rights more than any other kinds of rights, but first nations and aboriginal cultures put a huge priority on collective rights. In order for both cultures to thrive, one has to appreciate the other. There has to be a margin of appreciation for our first nations cultures to be able to develop their group base of values. Otherwise, you strangle their cultures.

It's the same internationally. Cultures have to be able to survive and be different, but they can't participate in fundamental violations of things like the right to life, the right to be presumed innocent, or things like gender equality.

So it's a delicate balance. It's a constantly evolving process in which people have to be vigilant, particularly the judiciaries, to these kinds of problems. There is no easy answer. It's a constant nuanced calculus that has to be prevalent in all things that people do, but this is where judicial education becomes very important.

● (0950)

The public interest is at the centre of issues such as Canada's involvement in strengthening the judicial pillars that exist. It has to be grounded in human rights, yet be sensitive to the local needs and local values of wherever you're working. As I said, in situations like South Africa, the people's courts can be respected as being an integral part of village governance, but Canada can't support a people's court that flogs people or participates in capital punishment or doesn't respect the rule of law. There have to be some fundamental requirements, a floor that everybody stands on. The ceiling can vary, but the floor is fundamental human rights values that separate church and state, that respect life, that respect the rule of law, that respect equality—those kinds of things.

**The Chair:** Thank you.

We'll come back to Mr. Khan.

**Mr. Wajid Khan (Mississauga—Streetsville, CPC):** Thank you very much.

Thank you for being here. It's very enlightening.

My questions might be a little broader. I'll ask both of them and wait to hear your answers. I want to go to the two most populous countries in the world, India and China. One is a democracy; the other is still a communist country. How do you compare their legal systems?

Human rights records aren't any better in either one of them. I read somewhere that 13 million girls are killed annually in India. Does a democracy guarantee rule of law, human rights, and so on? I'd like you to comment on that.

The other question has to do with gender equality. We talk about it and obviously we all want it. We support it. It's important. If we go to countries such as India, Pakistan, and Bangladesh, which are supposed to be third world countries, developing countries, we find in Bangladesh that you have Hasina Wajed as Prime Minister. I think she was Prime Minister twice. The leader of the opposition is also a female. Benazir Bhutto was the first elected woman in Pakistan; she was twice elected. Indira Gandhi had a tremendous role there. Are we to assume that those countries have achieved greater gender equality?

Here in our own country, we barely have women who go beyond the first round in election races. We've never had a female Prime Minister—we did have one, sorry; we had one for a very short while. She was a Conservative.

I'd like you to comment, please, on that. And Pakistan has reserved 60 seats for women; only women can run there, and women can also run anywhere else they choose to. They have beaten some men over there.

**Prof. Kathleen Mahoney:** First of all, India and China, you're right, there are huge human rights violations in both countries, without a doubt. They're both hugely populous and they're both very

poor. Whenever you have poverty, you have human rights violations. They go hand in hand. Poverty itself, arguably, is a human rights violation, but I won't bother going there right now.

Of course, the fundamental difference between China and India is that India is a democracy, and you can work in democracies. You can appeal to those democratic principles. I've worked in India, and there's a world of difference with China, because in a country like China, where the government is the ultimate source of all knowledge and power, everything depends on the sensibility of who is in charge. If by definition they do not believe in the rule of law—as I was saying earlier—you can't work in a place like that unless there's some fundamental recognition of the separation of the judiciary from government, the independence of the judiciary, and you can't talk about people's right to have their day in court and be treated fairly in those kinds of contexts. It's just not doable in that context. You might be able to work a little bit in one place here or one place there, depending on the local politician, but you're always at the mercy of the ultimate dictator.

In India, on the other hand—it's highly possible and it has been done—you can appeal to the fundamental values of the country to make change, you can identify needs, you can identify abuses, and you can work through what they themselves have embraced as their own values. You go to their constitution. You can look at that and use that, and people within their own country can use that, and to have the values, the template in place is critical to progress.

So yes, there are abuses in both, but the ability to change that is far different in one country from the other.

On your questions of gender equality, and pointing to certain situations where in India and then Pakistan there have been female leaders, and whether or not that indicates that a country has achieved more gender equality than a country like Canada, no. Most females who have led countries have done so because—and especially in India and Pakistan—they were related to males who had those positions ahead of them. And the Philippines is the same, whereas Margaret Thatcher is a different example in England. What's important, I think, is developing a culture of commitment to gender equality in the country, so you don't see people at the top achieving those places episodically, but you see within the entire population the access to education, access to jobs, access to reproductive control, access to appropriate child care supports, and things like that, which can enable women to participate. Enabling ordinary women across the board in the population to participate is key to gender equality. It isn't just opening up a space at the top for the widow of a former prime minister or something like that.

In other words, you have to create this broad-based commitment and culture of gender equality, and in places that have embraced that, there are far more women participating at all levels. It would be nice in Canada to have more women participate, but if you look at—

● (0955)

**The Chair:** If you don't know, Mr. Khan, we're well over. I'll give you ten seconds.

**Mr. Wajid Khan:** Is it possible to have fifty-fifty participation in the House of Commons? What are the obstacles to it?

**Prof. Kathleen Mahoney:** Sure it's possible, but it's possible to have more than that. In law schools now we have more women than men. In medical schools we have more women than men, and that's because of the opportunities. Girls as well as boys now can compete on an even keel. I don't think it's the same in politics as yet, unfortunately.

**The Chair:** Thank you.

Madam Sgro, five minutes.

**Hon. Judy Sgro (York West, Lib.):** Thank you very much, Ms. Mahoney. It has been very enlightening having you here.

Reading your bio, I have to applaud the work you've done. I appreciate that on behalf of all of us as Canadians and around the world. Many of the comments you made don't only apply abroad. They apply very much in Canada when we get into various other issues you touched on, but we don't have time to go there.

You talked about developing the base, getting that neutrality, if you're going to try to get democratic reform happening in many of these countries. But in countries like Iraq, where there has been such an effort to try to bring stability, and religion continues to get in the way, do you think there will ever be the opportunity to move those countries forward until they separate state and religion?

**Prof. Kathleen Mahoney:** I think it's fundamental—especially, as I said, with these extreme fundamentalist views, where there doesn't seem to be middle ground—that the separation of religion from the running of the state is absolutely important.

But in places like Iraq, I think there has to be a cessation of violence before anything can happen. In my opinion, you can't begin to start on.... These are relatively sophisticated approaches, which require commitment and a certain atmosphere of willingness to develop your own country and your own society. You can't do that where the society itself is in complete turmoil.

I think the security issues in Iraq are paramount. They have to be dealt with first, before any progress can be made.

And then, my own personal opinion is that the separation of the church and state would be the next step. And then, perhaps, the society can move forward very incrementally, putting some very basic building blocks into place, such as the rule of law—just those basic concepts, and the basic concept, other than of picking up a gun and settling disputes, of there being some place else to go to settle them, whether it's village-based or a more formally-based court system.

But having people accept that there is another way to solve disputes than violence is very fundamental before any of this becomes relevant.

• (1000)

**Hon. Judy Sgro:** I expect there's a lot of work being done on that very issue in those countries, given the commitment we all have to finding a solution to the ongoing war there.

Would we be better off putting more emphasis on trying to educate people on the peaceful way to resolve issues than we are putting on the military section of it?

**Prof. Kathleen Mahoney:** Oh, absolutely. I am an educator and I believe deeply in the power of education. I've seen it: changing people's minds is the most powerful thing you can do. It's more powerful than shooting someone, because as soon as you shoot someone, you generate feelings in somebody else of wanting to shoot you for shooting that person. But education is changing people's minds, and that's why it is so critical for developing anything new, whether it be gender equality or racial equality or democratic institutions.

I've spoken about judicial education in particular, but education about human rights, I think, is even more basic than this in changing people's minds. The concept of human dignity, which seems so simple and fundamental to us that we don't even think about it, is a profound concept. If people internalize it, for themselves and others, it can change their mind about so many other things.

Canada has a huge role to play there. We're not a strong country in terms of our military strength and our population, but we have a huge ethic of respecting education and we're good at it. It strikes me that if we're to be effective in the world, we can take what we do best, which is to transmit knowledge and understanding and those kinds of fundamentals, rather than try to compete in this other world, where we don't have the population resources or the geopolitical position to do so.

That's been the focus of Rights and Democracy, and it's certainly been my focus in my human rights work all my life, that the most powerful contribution you can make is to educate people.

**The Chair:** Thank you, Madam Mahoney.

Mr. Goldring.

**Mr. Peter Goldring:** I think Mr. Casey....

**The Chair:** Does Mr. Casey have one?

**Mr. Bill Casey (Cumberland—Colchester—Musquodoboit Valley, CPC):** Yes.

Thanks very much for coming and helping us with this.

I'm going to go along the same lines as some of the others. On one hand you say we must develop ways to promote democracy that include the culture of the area. But in so many cases the culture is very much against human rights. I don't know how you can reconcile that, in a case where gender equality is absolutely not accepted in many areas.

How do you promote democracy without that basic human right?

**Prof. Kathleen Mahoney:** Culture, as I said, is often used as a handy tool to be dismissive of them and to tell people they are totally irrelevant. For example, I was once in a meeting at the United Nations and the topic was genital mutilation of women, which some people purport is a cultural activity. This one particular chieftain stood up and started berating women for saying that there's anything wrong with that, how dare you tread on our culture? He was promptly asked by a woman from his own country, "Who do you speak for? Are you speaking for the women of your country or are you speaking for your power over women in your country?" It was quite a comeuppance for him, because he was using culture and his own definition of culture in his power base to promote an abusive practice.

That's not western culture imposing itself, that's the culture in itself saying we don't want this any more. On the one hand where it wasn't very successful for western human rights advocates to condemn genital mutilation, it was very effective for western nations to support women in their own countries to say to the men in their own countries, or to their government or to their organizations that would either turn a blind eye or support this kind of activity, "We don't want this. It's harmful to our health. It's harmful to our future children. It's harmful to our society to have this kind of practice." The most effective way western countries could support that is by supporting the local women.

Another good example was stoning. Remember when there was that big exposé about stoning a woman who had committed adultery or something. What was very damaging in that scenario, because Rights and Democracy supported the local lawyers in Nigeria who were assisting that woman, was western countries condemning the government structure, saying "You're so brutal, you're so savage, imagine stoning someone." That was very unhelpful, because all it let the chieftains do was say look at these western people trying to corrupt our culture, and they're even more punitive.

What was helpful in that situation was to empower the lawyers working for that woman, give them the resources and support that they needed so they could bring to the Muslim court the arguments to show the judges that they were wrong in interpreting the Koran the way they were. It turned out to be a local solution to a local problem rather than a western culture imposed one. At the end of the day it promoted gender equality, because the judges then said this law is wrong; it's being interpreted wrongly. That did more to support the equality of women in Nigeria than western culture being imposed to say that these people are savages and they shouldn't be doing this. It just makes the local people feel bad and in fact turns some women against people saying that locally.

This is what I mean when I say that cultural relativism can be used as a sword and it shouldn't be used that way. But on the other hand, those who are providing assistance have to be very sensitive to acknowledging local people being able to solve these problems themselves, and empowering them to do so, giving them the resources they need to do so but not necessarily imposing the way we would solve the problem through using human rights as a sledgehammer, for example.

The genital mutilation thing, just to finish that story, was solved, and is being solved in many countries by promoting health, promoting good practices, and educating people about how women's reproductive capacities work and how this can damage those reproductive capacities. As opposed to name calling or suggesting that they have a primitive culture, it's enriching that culture to respect the integrity of the woman's body, the role of the woman in society, and how important a role they play. They should be elevated, as opposed to being able to treat them in this manner that hurts them physically, emotionally, psychologically, and in every other way.

•(1005)

**The Chair:** Thank you, Madame.

Madame Deschamps.

[*Translation*]

**Ms. Johanne Deschamps (Laurentides—Labelle, BQ):** Thank you very much, Mr. Chairman.

Thank you very much for sharing your knowledge and expertise with us, Ms. Mahoney. Your presentation was most enlightening.

Getting back to something you said at the beginning of your testimony, you stated that human rights were constantly evolving. Today, human trafficking is becoming a problem of global proportions. All continents and cultures are affected. The principal victims are women and children. At our last meeting, we heard from several representatives of Status of Women Canada, since the committee was doing a study on human trafficking. Agencies working in the field that have attempted to collect the little data that is available have pegged the number of victims of human trafficking at between 400,000 and four million. As you can see that is quite a range.

The witnesses informed us that at the court or judicial level, there are very few programs or little training available to address this problem.

I'd like to hear your views on the subject.

•(1010)

[*English*]

**Prof. Kathleen Mahoney:** Actually, your numbers are very low, from what I understand. I've done quite a bit of work in this area. I used to be on the international committee on trafficking in women and girls. It's a huge problem. It's a huge problem in Canada that there are all sorts of girls being trafficked and brought to Canada.

In Calgary, for example, there came briefly into the media the existence of the so-called trick pads, where young girls—Asian girls, primarily—are brought into the city to serve as prostitutes. They're teenagers, and sometimes, horrifically, of a lower age than teenagers. They're moved very quickly from house to house and often are servicing 30 or 40 customers per day. Of course, these young women have very dismal futures. In fact, their life expectancy is very short.

This is really a discussion about prostitution. Prostitution, in its broadest sense, includes wife-buying, pornography production, importing women and girls for the purpose of prostitution, and trafficking in them around the country once they're here.

Judges very rarely get to deal with these issues, because the whole area of prostitution is one where there's huge bias against these people in the population. They are the most devalued people in our population and as a result get very little attention.

I think you can see that in the whole Pickton trial going on now, with estimates of well over 60 disappeared women. And this was known for years before any real, systematic, and rigorous investigation went on. My own personal view of it is that the victims themselves were largely aboriginal, they were all prostitutes, and they were drug-addicted, so they were very low-value people.

If you look at, for example, the community's reaction to the Montreal massacre, it was far more dramatic. We recognize it every year—we have special acknowledgments, there are monuments, and the like—because they were high-value women. But there's no difference, in the sense that in Vancouver women were targeted and were massacred, and these were largely aboriginal women.

This points, I think, to a real problem in our own society of the different biases we carry. All human beings, if one approaches this through the lens of human rights again, are valued and have value regardless of their life circumstances. Often, if you investigate who are prostitutes and why they are prostitutes, you'll see poverty as the fundamental bottom line.

But there's also social disadvantage—and abuse, usually—in their backgrounds, and so “there, but for fortune, go you and I”. And increasingly we are seeing young boys getting trapped into this world of abuse and violence that prostitutes live in. It strikes me that again, just as in the indigenous rights area, we have our own backyard to deal with in terms of this human rights abuse, as well as giving assistance to others who need it.

There are certain countries that Canada has relationships with that are the source of trafficking, and certain countries that are the conduits for trafficking. It strikes me that when we are making decisions about our relationships with these countries, this should be on the agenda among conditions for trade, or conditions for aid, and for our participation in strengthening these countries.

If we turn a blind eye to this fundamental and profound violation of human rights, it not only encourages that country to continue in what they're doing, but it strikes me that it also blackens our country. If we turn a blind eye to those situations abroad, we also do it at home, and that has been going on, in my view, far too long. If we value all of our own citizens, that should colour our policies in our dealings with others.

•(1015)

**The Chair:** Thank you, Madam Mahoney.

Mr. Goldring.

**Mr. Peter Goldring:** Ms. Mahoney, your comments about the local tribal level or local village level, and about the importance for us of viewing these things in the lens of what the local customs and the local laws are and trying to make improvements within their own understandings of their laws and justice system, are I think absolutely essential. And of course, that's going to be the challenge, because it involves understanding their local governance too, and what changes you might be able to make so that the government may be able to impact some of the local customs and laws as well.

My question will be more towards what your viewpoint of constitutional law would be, understanding that some countries have constitutions and others haven't. We've heard several times that sometimes the Koran is being interpreted as a constitution, and of course, it would be a very immovable thing to try to make any changes, in that aspect.

What would your viewpoint be about encouraging evolutionary constitutional development in many of these countries?

**Prof. Kathleen Mahoney:** I think constitutional development is very, very important. It's not magic and it doesn't deliver as soon as you have a constitution, by any means. We operated quite nicely for a long time without the Charter of Rights and Freedoms. People were treated well, we respected the rule of law, etc., but what the charter did was focus public attention on some of these values. I think it developed a richer culture in Canada for human rights and for respect for human rights.

That's what constitutions can do, but many countries of the world have constitutions and they're the worst countries. They're some of the outlaws of the world, right? So there's no magic in a constitution. Along with a constitution must come the implementation of the values the constitution contains.

As I was saying earlier, things like access to justice have to go hand in hand with a constitution, because what good is it if the people it's designed to protect can't access the very body that is going to give them a remedy for the violation of the constitution? In Canada, we had the court challenges program. I was a proponent of that, because it was designed to give those people who are suffering the abuses the charter is designed to protect them from an ability to go before a judge and ask for a remedy. Otherwise, what's the point, because by definition, disadvantaged people do not have the resources to get in front of expensive courts, especially in our system.

Now, even to have a simple family law matter decided in court is minimum \$25,000, minimum. By the time you get your documents filed, your lawyer hired, a couple of visits paid for, and you go to court, you're looking at at least that kind of money. Who has that kind of money? Certainly not people who are downtrodden. The prostitutes I was talking about earlier or children who are being abused or people who are being trafficked don't have that kind of money. Similarly, the person who's being sexually harassed in her minimum-wage job—does she have money to get to court? No.

So access to justice is important in a constitution. You can't protect gender equality or racial equality and then give no tools for people to have those rights respected. So legal aid is important. People's courts are important, if that's the alternative from formal courts, but those people's courts have to run appropriately, so they need education and rules to go by and some structures to work within.

Sure, constitutions serve as a framework. They're a bedrock, they're a reference point. They are something whereby people who are suffering in jail without access to a lawyer or being not charged can point to and accuse the government of not fulfilling the obligations they have promised to fulfill.

**Mr. Peter Goldring:** Are you working on any constitutional—

•(1020)

**Prof. Kathleen Mahoney:** There's constitutional development going on there, yes. Absolutely there is.

**Mr. Peter Goldring:** You mentioned also—and I'm not sure whether you had mentioned it was being done or you're suggesting that it be done—that certain rights, breaches, or violations conditionally impact international trade. Is that something you're approaching in Vietnam?

**Prof. Kathleen Mahoney:** Without a doubt. What judges are telling us and politicians are telling us is countries want to trade with us, but they're saying they don't trust our system. The people in Vietnam don't trust their system. They won't bring disputes to the courts because they don't trust the courts. They're corrupt.

If you had a company and you were wanting to trade widgets with Vietnam and you knew inevitably there's going to be a dispute down the road, but there's no court to go to that you can trust to resolve that dispute, are you going to trade with them when you've got a choice to trade with somebody else? The Vietnamese recognize that problem. That's why they're so motivated now to incorporate a very heavy and sophisticated and demanding judicial education project into the list of priorities they've identified, which is going to bring them into the mainstream, so that the whole country can prosper.

As I said, countries such as Canada and others are going to say they'd like to trade with them, but what do they do when there's a problem? Where do they go? Who do they trust? So that's why the judicial system is key to the marketplace as well as to individuals who live there. They also have to trust the judicial system. Otherwise, if they don't, they're going to settle their own problems. If somebody steals something from them, they beat them up or steal something back and then you get a cycle of lawless behaviour.

**The Chair:** You're out of time.

You did mention the trade and the aid and you tied the aid to a certain benchmark. There are some countries now that we do not send aid to. I don't think we send aid to Zimbabwe, I'm not certain if there's anything that gets through to Zimbabwe, and maybe a few other countries.

Is there a problem of having too low a benchmark in some of these countries? We still send some aid to China. We still send some aid to other countries where we know there are human rights violations. We know that improvement can be made. How do you balance that cut-off of aid with sending them some aid, so we can influence them toward this lowest common denominator as a benchmark?

Then we'll go to Madam McDonough too.

**Prof. Kathleen Mahoney:** There are different ways of targeting aid. Sending aid to a corrupt government is not terribly useful, I think, because sometimes it goes to buying a new Mercedes-Benz or to other expenditures that don't help out anybody except the corrupt recipient.

**The Chair:** You are saying we should try to work within NGOs and groups within those countries, without sending to those governments.

In certain countries we do still send aid, but very little money that is targeted for democratic development. How can we take aid dollars and even if it's a place like China, where they have so much...? When it comes to democracy-building, you wonder at times if there is really much use in trying to promote democracy there.

How can we, Canada, try to take some of those aid dollars and make a difference for democracy promotion?

**Prof. Kathleen Mahoney:** I think the answer is to be very careful of where they're targeted. Some targeted areas are much more effective than others, and small amounts of money can go a long

way; we certainly learned this at Rights and Democracy. Working with key NGOs that are proven to be effective, as opposed to ones that aren't well researched or that have unknown principals with unknown track records—that is effective, as is working with media.

Working with women has proven to be very effective; it's because women treat the dollars differently. That's been proven by the World Bank in the studies they've shown. If you give a woman a dollar, she'll spend 90¢ of it on her community. They've done a study on gender difference. If you give that dollar to a male, he'll spend 10¢ to 15¢ on the community.

It's targeting aid to groups that will deal with it effectively, and I'm not saying that in any kind of provocative way. The World Bank has proven that.

**The Chair:** The work that the Nobel Peace Prize winner Muhammad Yunus did with microcredit recognized the importance of getting that type of credit into the hands of women.

I'm going to go to Madam McDonough. It will be the concluding question, if that's all right.

● (1025)

**Ms. Alexa McDonough:** Your last reference to how women spend money compared with men in general makes you think that at the very least we should reverse the wage gap that exists now between men and women so that more of the money women earn would go into the community.

I know this is the international development committee, the foreign affairs committee, and we're very much focused on international initiatives in the international arena around democracy building, but I really want to return to the point you made about needing to ensure that people have the tools to allow them to actually participate in the process of protecting and advancing their own rights, and so on. I don't want to put words in your mouth at all, but I want to revisit the court challenges program cancellation.

It seems pretty obvious this is a step back, if we understand the point you were making: people have to be empowered with the legal capacity, the legal resources, to advance their own rights.

I'm wondering if you can comment further on that, both in terms of the implications for women's struggle for gender equality within the Canadian context and also in terms of our reputation in the big wide world, as we advocate gender equality and justice abroad while actually eroding the access to meaningful legal processes by those who are struggling for equality and justice at home.

**Prof. Kathleen Mahoney:** When I used to do a lot of travelling—I still do some—to international conferences, it was amazing how people all over the world knew about our court challenges program. They would congratulate Canadians, and often it was included in your introduction, if you were speaking to a conference, that Canada believed so strongly in democracy that it would fund groups to sue itself for its shortcomings and for things it may unconsciously do that have adverse impacts on women or minority groups. It was a huge card we could use to say that we had credibility, when we spoke. We knew of what we spoke because we implemented the values we trumpeted.

Lots of people can brag about their country, and how they believe in this, that, and the other rights, and how “we’re better than you are”, and stuff like that. Not that the Canadians do it, but discussing the court challenges program certainly put Canada on a plane that was unique.

And other countries followed the lead. In fact, South Africa started its own centre for judicial support for constitutional cases, and other countries have done similar things. It was not unlike the way the world perceives our health care system. The health care system and court challenges program and the charter: those are the defining characteristics of Canada.

So my own belief is that it is a step back, because what it said was that Canada really means what it says. It really puts its values on the line when it develops something like a court challenges program, which was quite modest in terms of the moneys that were devoted to it. But symbolically, it was out there, and ordinary people could use it to actually get a result.

I don’t know how familiar you are with Canadian jurisprudence, but the court challenges program has been implicated in some of the most important decisions in Canadian jurisprudence today, without a doubt; cases that not only have influenced our own country but have been cited in judgments all over the world. I can tell you this absolutely truthfully. Australia, New Zealand, even the United States of America, South Africa, India, Sri Lanka.... These judgments that came about because the litigants were supported by court challenges programs in Canada have had a profound influence around the world.

And they would never have seen the light of day in this country but for the court challenges program. I know this because I have participated in many of them myself as a pro bono litigant, on behalf of minority women, on behalf of the disabled, on behalf of violence-against-women cases, hate propaganda, pornography, and the like.

So it is very important. It’s hugely symbolic, and not only is it symbolic, it has profound practical benefits that go far beyond what you can imagine, out there in the real world.

•(1030)

**The Chair:** Thank you.

Mr. Goldring, then Mr. Rota, and then we’re going to conclude our time.

We have some motions. We have a little more time set aside for committee business.

So proceed very quickly, Mr. Goldring.

**Mr. Peter Goldring:** Ms. Mahoney, there have been some suggestions of unhappiness with the court challenges program in the past, and one of the more significant ones has involved the English rights groups in Quebec on language rights.

I think specifically of a person I know very well, Brent Tyler, who’s a well-known English rights activist in Quebec. For years and years there has been comment about the fact that they had no access to the court challenges program whatsoever. I don’t know the details of other ones, but there seems to have been unhappiness with the

program overall, and that is perhaps one of the reasons why, with due consideration, it has been limited.

Could you comment on that?

**The Chair:** Mr. Goldring, there’s not much of a question there. There may be a little comment on that case.

We’ve already quite clearly heard your position on the court challenges program, which is on the record now.

**Prof. Kathleen Mahoney:** I have just a short comment. The key to the court challenges program was that it was to assist the disadvantaged minorities in Canada. That’s why, by and large, white men’s groups, for example, wouldn’t necessarily have ready access to court challenge—or English speakers in Quebec, the thinking being that they have other access to the courts. They have, by definition, broader access to power, broader access to resources than people who by definition are disadvantaged. That is who the court challenges program was targeted at, not the advantaged in society.

There may be exceptions to that, where some group could show disadvantage. But primarily, that’s the profile of the court challenges program: that it supported disadvantaged minorities, as opposed to advantaged majorities.

**The Chair:** Thank you.

Mr. Rota.

**Mr. Anthony Rota (Nipissing—Timiskaming, Lib.):** Thank you.

Many of the topics you brought up could probably be two-hour sessions themselves, so it’s regrettable that you’re only here for two hours, or not even that.

One of the issues you touched on earlier was the alternate legal system, and you spoke of a native community within Canada where reconciliation and healing were part of the resolution. You spoke of restoring harmony. That’s one instance, and some of the other issues I looked at or that I’m aware of in the smaller communities are not so much based on reconciliation, but they’re looking at retribution and punishment. That seems to be more of a visceral, immediate reaction, as opposed to long-term, but sometimes it’s hard to get over.

How do jurisdictions blend what grassroots are doing with the mainstream and get them working in unison? I guess the question is this. How much freedom do you give the judiciary system to deal with that? Where they work, how much freedom do they give the alternate court? Can you maybe further elaborate on examples where this works or where it hasn’t worked in the past?

**Prof. Kathleen Mahoney:** I think the Canadian example is the best. Some of the best work in the world is being done here in Canada. To give Justice Barry Stuart credit, he developed this concept of circle sentencing, so-called, in the Yukon because he recognized that so many of the problems that were endemic to the aboriginal communities where he was sitting as a judge were not being properly addressed. So many problems were related to substance abuse, grinding poverty, and people’s inability to cope, as opposed to inherent criminal behaviour, so he developed this idea of community support for people, instead of sending them away, as I mentioned earlier.

That approach was appealed in the B.C. Court of Appeal as being inappropriate. The B.C. Court of Appeal held that it was not inappropriate, that it was appropriate, and that it could continue. That was a huge breakthrough legally that having a rich cultural component and having a community-based component wasn't too far out there that it couldn't be taken into account in the mainstream justice system.

So that was where the first breakthrough occurred. Then in Alberta this pilot project was started at the Tsuu T'ina Nation reserve, and the way it works is that court is held on the reserve—regular, provincial court—only an aboriginal judge is the sitting judge. There are aboriginal lawyers, the community can come and watch, and so on. It's just held in a room somewhat like this.

The difference is that there is a peacemaker who operates with the judge, and there are also elders who sit and can advise the judge, but the peacemaker's job is to go out into the community, once complaints have been made, to try to figure out how they can deal with this in an alternative manner that's more satisfactory to the community and will not detract from it or cause it to disintegrate even more. That person then works with community members who are prepared to carry out the sentence with the accused once he's pleaded guilty. In other words, if a person has alcohol issues, they will help him to stop drinking, take him to AA, provide support if they sense the person is going to revert back to his former behaviour. They will protect family members who may have been abused by this person. They will have someone stay with him or take the abuser out to live in another place or go out on the land or whatever is appropriate for that particular individual to help him get over the problems that he's manifesting in his behaviour.

When you ask, how does this work—is this a separate justice system entirely in terms of its relationship to mainstream justice—it's very interconnected, because before this sentence is approved, the peacemaker comes back with the accused. They sit before the judge and the crown prosecutor and they present the plan, and the judge has to agree to the plan. Then they must come back after a certain period of time and report on the success of what they've said they were going to do. Was it successful? Are people doing what they said they were going to do, or aren't they? If they're not, the judge can call the accused back and sentence him in the normal way. If that involves jail time or whatever, that's what happens. But if it's not the case and if people say no, it's functioning, and they report back the progress of the program, then it's left to carry through its course of activities. The matter is then resolved.

The reason I know a little bit about this is I've invited these people to my classes at the university to come and discuss it with the students and to explain how it works. From all appearances and from what they've told us, it's working very well. The community is enriched because of this. They feel more committed to their own community and to doing things in their own way that makes sense to them, plus it's backed up by our whole mainstream court system, if it's required.

There are some offences that are inappropriate for that type of solution. This type of solution is more for minor summary conviction matters, family matters, and things like that. Huge problems such as rape or murder or something like that would go directly to the mainstream system.

• (1035)

**The Chair:** Thank you.

We're pretty well over time and I want to leave enough opportunity for our committee business today.

We want to thank you for being here with us today and for taking the extra half hour to stay and answer our questions. I know that it's been a very engaged group here, with lots of questions. So we thank you for being here.

We're going to suspend for a couple of minutes and then we'll come back to committee business. We'll give the opportunity to our guest to make her way out if she so chooses.

• (1035)

\_\_\_\_\_ (Pause) \_\_\_\_\_

• (1040)

**The Chair:** Order.

Welcome, Mr. Patry.

I want to remind the committee that there is another committee meeting right at eleven o'clock here, so we cannot go past eleven. We want to move into committee business, and other times it seems that the committee business has been perhaps cut short. We don't want to do that. We have a number of motions that have been tabled with the clerk.

First of all, we have a notice of motion from Ms. McDonough in regard to disabled persons.

Ms. McDonough, would you like to speak to your motion, please?

**Ms. Alexa McDonough:** Thank you very much.

I'm very pleased to bring forward this motion. It's very straightforward and very brief, so I don't think I even need to read through it. Basically, it's asking that we have the Minister of Foreign Affairs and appropriate officials who he would choose to bring to brief the committee on the federal government's efforts to ratify the International Convention on the Protection and Promotion of the Rights and Dignity of Persons with Disabilities.

The reason for this is that Canada actually distinguished itself at the UN in terms of the engagement with organizations representing persons living with disabilities. It was a major player in the adoption of that covenant in mid-December. And we're now coming up to the window in which there is the opportunity to ratify. I'm very much hoping that we can push forward to remain in the forefront in a leadership role.

So I would urge the support of committee members. I know we've got a lot of other business to do, but it's really a straightforward information-seeking session by ourselves to try to advance this agenda, which is very much in keeping with what we're doing.

**The Chair:** Mr. Goldring.

**Mr. Peter Goldring:** Thank you, Mr. Chair.

Certainly this would allow the minister to come forward and explain. I would certainly think that in looking at it I'd want to know some more information on exactly what the covenant is and some details on it. Certainly from the service of it I would think that everybody wants to improve the international understanding of people with disabilities through the convention on this. There are some concerns here, though, that the convention may be touching on provincial responsibility as well as federal responsibility, so it would probably necessitate further consultations from the minister provincially, municipally, federally, and throughout.

But I do agree that a briefing from the minister to update us on what direction possibly will be taken on it would be favourable and be beneficial to everybody.

•(1045)

**The Chair:** Does anyone else have any comments?

Mr. Patry.

**Mr. Bernard Patry (Pierrefonds—Dollard, Lib.):** I agree with Mr. Goldring in the sense that any time we could have the minister here to ask him any question about any issue is good for the committee, and on this issue we'll support the motion.

**The Chair:** Thank you, Mr. Patry.

I know Mr. MacKay always looks forward to appearing before this committee and is very open to doing so. On this one in regard to the rights of persons with disabilities, it would give him the opportunity to respond on what Canada is doing and what we're doing in preparation for the signing of the convention on March 30.

Would anyone else like to comment? I agree with Madam McDonough; I think it's something we can all support.

Go ahead, Madame Barbot.

[*Translation*]

**Mrs. Vivian Barbot:** I agree with what was said.

[*English*]

**The Chair:** All right. Thank you, Madame Barbot.

Can we call the question on Madame McDonough's motion in regard to the signature and ratification of the International Convention on the Rights of Persons with Disabilities?

Let it be recorded that it is carried unanimously.

(Motion agreed to) [See *Minutes of Proceedings*]

**The Chair:** All right, the second motion on the table is a notice of motion from Madame McDonough in regard to the report on Bretton Woods.

Madame McDonough, would you please speak to that motion?

**Ms. Alexa McDonough:** I can, very briefly; I'm certainly not going to read all through it or it will take up the remaining time.

**The Chair:** Make your motion shorter, then.

**Ms. Alexa McDonough:** That's hard to do, because it's a complicated matter. It arises out of the widely shared concern about increased transparency, accountability, and effectiveness. I think it's well known that it is something we're focused on as a committee in regard to Canada's overseas development assistance.

It's very well known that the World Bank and IMF are putting more attention on it. Some of us who have had the opportunity to travel and meet with World Bank officials in Washington and in Kenya recently have seen it is very much an increased preoccupation of the World Bank.

I think there's a bit of an issue here around the accountability that we basically demand of ourselves around Canada's role and participation and commitments at the World Bank and through the International Monetary Fund. It's really about completing that cycle or circle of accountability and being sure that we know what we're committing to on behalf of Canadians. There is a timing aspect, in that this would logically follow the upcoming *Report on Operations Under the Bretton Woods and Related Agreements Act*.

I would so move. I hope that people see it in the spirit of our general commitment to increased transparency and accountability.

**The Chair:** All right.

Go ahead, Mr. Goldring.

**Mr. Peter Goldring:** I have difficulty supporting this motion.

Canada has been a longstanding proponent of a stronger focus by both the IMF and the World Bank on strengthening governance. While recognizing that considerable progress is being made, Canada continues to press the World Bank for a clear results framework against which progress on improving governance can be measured.

Canada also is a leading advocate for debt relief for poor, highly indebted countries as an important means of promoting sustainable development. In 2006 Canada contributed \$16 million in fulfillment of our contributions in clearing the debts of highly indebted poor countries.

The committee has the ability to invite the minister, should it be necessary, at the time of the release of the report.

**The Chair:** All right, Mr. Goldring.

Mr. Obhrai was not able to be here this morning, so thank you for giving us some of the concerns Mr. Obhrai had in regard to this motion.

I think Madame McDonough mentioned that we met with the World Bank when we were in Washington. Certainly the World Bank has appeared before the foreign affairs committee in the past. This is asking for the ministers and directors and executive directors of the World Bank and the International Monetary Fund to be invited fairly soon, almost before the report is issued, and—

•(1050)

**Ms. Alexa McDonough:** No, it's the following report that makes it clear.

**A voice:** It's within four weeks.

**Ms. Alexa McDonough:** Yes, the report would be within four weeks.

**The Chair:** All right.

Mr. Patry.

**Mr. Bernard Patry:** Madam McDonough, in a sense I agree with your motion, but it's so many people to invite. You want to invite the ministers of finance and international cooperation, the Canadian executive director of the Royal Bank, the IMF, government officials, academics, and civil society. If we have all these people come within one or two sessions, and within four weeks you put a framework, a deadlock over there, if the report comes, and we have two weeks' recess after the report, we're going to be constrained with two weeks at that time.

For me, if you say you want to meet some people such as the minister responsible for this, and we could have a session or two sessions, I have no objection to this, but with all these people, it's going to take us I don't know how many meetings to do it. That's my problem, you see. In a sense, I don't see why we should not invite, as I said previously, the ministers. All ministers are always welcome to come and appear in front of the committee. It's good to understand more and to determine what they are doing.

**The Chair:** Thank you, Mr. Patry.

Madame Barbot.

[*Translation*]

**Mrs. Vivian Barbot:** My comments are along the same lines as those made by Mr. Patry. I fully agree with the objectives and with having a global vision so as to recommend a course of action to the Canadian government. However, in my view, we're dealing with a very broad issue. If we could decide how much time we have available to us and which witnesses we would like to hear from, I think this would be far more realistic.

[*English*]

**The Chair:** All right. Thank you, Madame Barbot.

Monseieur Patry.

**Mr. Bernard Patry:** I must say, too, in regard to this, if you're looking at the three last lines, you say, "and recommend measures to enhance government". To be able to recommend measures, we need to study. We just cannot make recommendations to the board, the executive director of the IMF, and the World Bank. It's too much. If you just say, "That the Standing Committee on Foreign Affairs invite the Minister of Finance, the minister responsible for IMF and the World Bank to appear in front of the committee", I will fully agree with this. I think we can do a job by listening to the minister, and after that, if we're not satisfied, we could invite some other people in the second round.

I would like to amend it, if Madam McDonough agrees. We always say friendly. I'd like to make a friendly amendment: that we just invite the responsible minister for the IMF and the World Bank to appear in front of the committee. That's the Minister of Finance and of CIDA.

**The Chair:** I think what Mr. Patry is saying, and it's a worthwhile argument, is let's continue to try to have, rather than a scattergun approach, a fairly limited approach to what this committee is going to study. This is a major undertaking if we are to come forward with recommendations in the midst of tabling a report on democratic development, in the midst of what's turning out to be a fairly comprehensive study of Afghanistan and all those, with limited time

now to come forward with a group of recommendations without a real study.

Is there any way we could have a friendly amendment to the latter part of this that would amend or delete this idea that we would come forward with recommendations or a report to Parliament? I ask the mover.

**Ms. Alexa McDonough:** I was ready to certainly consider favourably a friendly amendment, if that's what Bernard wants to propose—

• (1055)

**Mr. Bernard Patry:** Yes, sure.

**Ms. Alexa McDonough:** —but let me just say quickly that we're very much focused on issues of transparency and accountability, I think appropriately so. We have witnesses who represent agencies that get very tiny sums of money from the Government of Canada. We subject them to quite a lot of scrutiny. We want to know and understand what they're doing, with what effect, and so on.

We're talking, in the case of the World Bank and the IMF, about huge sums of money, and concerns have in fact been raised before this committee again and again that, on the one hand, where we're delivering ODA, as paltry as our commitment is at the moment in relation to that of many other countries, some of our policies at the IMF and World Bank actually are quite counterproductive to what we state as our primary objectives.

You have structural adjustment programs that actually undermine our poverty reduction programs, in some cases. I don't want to start elaborating on that extensively, but I am saying I think it's a big issue.

On the other hand, I'm very happy to accommodate a friendly amendment, if the point is that we should hear first from the minister and whatever appropriate officials he's going to bring, and IMF and World Bank officials, with a view to further consideration along the lines I've suggested. In other words, it doesn't commit us immediately to a more extensive study.

But I would make the case that it's a very substantial sum of money we're talking about, and for us to be so consumed with transparency and accountability for tiny amounts of money in various NGOs and so on, but not concerned about the transparency and accountability of our own participation in IMF and World Bank, seems to be a very out-of-balance kind of view of accounting for our

**The Chair:** I appreciate your arguments, but I guess what I'm asking is that they be more specific to the friendly amendment.

**Ms. Alexa McDonough:** Well, I'm waiting to hear what it is. You won't entertain it, unless it's specific.

**Mr. Bernard Patry:** I have the resolution in front of me.

I will say that to the fifth line it's fine. After you say "...the Canadian International Development Agency, and academics and civil society organizations, to appear before this Committee", I would change what follows to "after the government's tabling of its annual *Report on Operations Under the Bretton Woods and Related Agreements Act 2005*". Period.

**Ms. Alexa McDonough:** I'll entertain that, because I think it's progress. I think it's in the spirit of all-party consideration and—

**An hon. member:** I'll give it to you.

**The Chair:** We've all heard that. If anyone has anything specific to the friendly amendment.... It is, "to appear before this committee after..."—so we've taken out "within four weeks" and have left it a little more open-ended—and then: "after the government's tabling of its annual *Report on Operations Under the Bretton Woods and Related Agreements Act 2005*". Full stop.

**An hon. member:** That's it.

**Ms. Alexa McDonough:** Agreed.

**The Chair:** Are we all in favour? Is there any debate on the amendment?

Are we in favour of that friendly amendment?

(Amendment agreed to) [See *Minutes of Proceedings*]

**The Chair:** Now we'll go back to debate on the amended motion.

Madame Barbot.

[*Translation*]

**Mrs. Vivian Barbot:** No, I'm fine.

[*English*]

**The Chair:** You're all right?

Is there any question on the motion as amended?

Basically, we probably wouldn't have had to take a vote. That would have been left up to Madam McDonough. She accepted the friendly amendment.

**Mr. Wajid Khan:** Who are we inviting at the end of four weeks? Is it still going to be the World Bank and all that, or are we staying with the ministers locally?

**Mr. Bernard Patry:** First of all, we deleted the four weeks. We call the minister first, and after that, it's.... Don't be worried; we're not going to call you.

**The Chair:** But Mr. Khan's comment—

**Mr. Bernard Patry:** We're going to call the ministers first, and the officials who work at the World Bank and IMF. That's all. We want to call the ministers.

**The Chair:** Mr. Goldring.

**Mr. Peter Goldring:** I'll go back to the original. I don't believe this is necessary. We still have the right to call the minister after the report is received, even without the motion.

**The Chair:** Although the minister can always be invited, this motion also includes executives of the World Bank and the International Monetary Fund.

(Motion as amended agreed to) [See *Minutes of Proceedings*]

• (1100)

**The Chair:** That concludes the motion part of this meeting.

You have the steering committee's report in front of you. We want to get the go-ahead on this. The subcommittee met on February 14, Valentine's Day, and considered the business of the committee:

1. That the Committee invite the Ministers of Defence, Foreign Affairs and CIDA to appear before the Committee as soon as possible concerning the motion agreed to on Thursday, February 1, 2007, with regard to Afghanistan;

**Some hon. members:** Agreed.

**The Chair:** All right.

2. That the Clerk in consultation with the Chair prepare a budget to hear witnesses in relation to the motion agreed to on Thursday, February 1, 2007, with regard to Afghanistan;

Is that the budget you prepared? Maybe we should just take a look at it right now, or should we do that later?

You see before you a prepared budget, in the amount of \$32,300. This gives us the ability to call the pertinent witnesses whom we believe could appear before our committee on Afghanistan.

Do we have a motion to adopt this budget, as presented by our clerk?

**Mr. Bernard Patry:** I so move.

**The Chair:** Moved by Mr. Patry, seconded by Mr. Khan.

(Motion agreed to) [See *Minutes of Proceedings*]

**The Chair:** Item three:

That the Committee invite the Federation of Canadian Municipalities to appear on February 27 or March 1, 2007 concerning the study on democratic development;

We're going to give our clerks and researchers a bit of leeway here, because of the short notice, so that they can try to fit them into the date that suits best.

Do we have a consensus on the recommendation?

**Some hon. members:** Agreed.

**The Chair:** Item four:

That members of the Committee would meet informally with Mr. Jonas Gohr Store, Minister of Foreign Affairs for Norway on Monday, February 26, 2007;

When we were in Norway, we met with the foreign affairs committee, or certain members from their committee. This is an informal meeting with the minister, and I think it is very timely, concerning our study.

That day is a Monday. What type of informal meeting did we discuss? Was that a luncheon, or was it a—

**The Clerk of the Committee:** No, it's just an informal meeting of about half an hour. He has a lunch planned with the Speaker that day, so it would be from about 11:15 until 11:45.

**The Chair:** All right, from 11:15 to 11:45 on a Monday morning. Agreed?

**Some hon. members:** Agreed.

**The Chair:** Item five:

That the Committee invite representatives from Mines Action Canada to give the Committee a briefing on cluster bombs on March 1, 2007 and that individuals with differing views be invited at a later date;

**Some hon. members:** Agreed.

**The Chair:** Agreed. Consensus? No one is jumping up and down, screaming, hollering and shouting. Okay.

**Item six:**

That the Committee attend a lunch at the Parliamentary Restaurant Monday, March 19, 2007, with a delegation from Pakistan, lead by the Speaker of the National Assembly of Pakistan;

Although this would not be specific to our study on Afghanistan, we certainly recognize the issues with Pakistan, and this would give us an opportunity at a luncheon...

Again, I would remind this committee that when we plan these luncheons with dignitaries from other countries, the worst possible scenario, in my humble opinion, is when we don't show up. Many take these things kind of personally, so if we pass these things here, make sure there is representation. If you can't be there, make sure someone is. I would suggest that for this one, it's important for you to be there.

Do we have consensus on that?

**Some hon. members:** Agreed.

**The Chair:** Agreed.

**Item seven:**

That the Committee refer a request for a hearing on Colombia from the Canadian Council For International Co-operation (CCIC) to the Subcommittee on International Human Rights;

**Some hon. members:** Agreed.

**The Chair:** Consensus.

**Item eight:**

That the Committee refer a request for a hearing on Uganda from GuluWalk to the Subcommittee on International Human Rights;

This came forward, and we're passing it off to our subcommittee. Agreed?

**Some hon. members:** Agreed.

**The Chair:** Item nine:

That the Clerk provide the Committee with a list of all notices of motions which have been received since the beginning of the 39th Parliament but have not yet been moved.

This came out of a problem that we have. As we've talked about, many motions are being tabled, and it would seem that people expect that their motion will be dealt with first because it's been here since last summer.

So she's going to give us this list, and that's agreed?

**Some hon. members:** Agreed.

**The Chair:** Agreed.

Folks, unless I see anyone with anything else, we are adjourned.

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